8 - 2486 Justice Swayne

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 298. 243

WILLIAM H. GIFFORD, W. E. DUFFER, ADMINISTRATORS OF JOSEPH G. GIFFORD, DECEASED, W. D. GIFFORD, MINOR, BY HIS GUARDIAN AD LITEM R. McP. SMITH, APPELLANTS.

vs.

E. F. MULLOY, ADMINISTRATOR OF JAMES BANKHEAD, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED OCTOBER 30, 1875.

This is referred as Gifford vs Helms

SUPREME COURT OF THE UNITED STATES.

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1 UNITED STATES OF AMERICA,
Middle District of Tennessee, ss:

At a circuit court of the United States, begun and held at the Federal court-room at Nashville, within and for the district aforesaid, on the third Monday, being the 19 day of April, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the 99th year.

Present, the honorable H. H. Emmons, one of the circuit judges of the United States, and assigned to hold the courts of the sixth circuit, and the honorable Connally F. Trigg, United States district judge for the several districts of Tennessee. Present also, Edward R. Campbell, esq., clerk of said court, and William Spencer, esq., marshal of said district.

The following proceedings were had, to wit:

2 On the 31st day of August, 1871, the original bill of complaint was filed in said cause, which is as follows, to wit:

JAMES BANKHEAD
vs.
JO. G. GIFFORD ET ALS.

To the honorable judges of the circuit court of the United States for the middle district of Tennessee, sitting in equity in Nashville, Tennessee

James Bankhead, of New York, and a citizen of the State of New York, against Jo. G. Gifford, of Murfreesboro', and a citizen of the State of Tennessee, R. A. Bennett and John W. Head, both of Sumner County, and citizens of the State of Tennessee, Winslow Hart, T. M. P. Hall, and W. H. Gifford, either of Sumner, Trousdale, or Smith Counties, all three citizens of the State of Tennessee, and all of said defendants are citizens of the middle division of the State of Tennessee.

And thereupon your orators complain and say that one Gideon Gifford did, on the 29th day of February, 1868, then of Sumner County, Tennessee, and being a citizen of the middle division of the State of Tennessee, filed his voluntary petition in bankruptcy in the district court of the United States for the middle district of Tennessee, at Nashville, to be declared a bankrupt; and that on the day of , 1869, he was duly discharged in bankruptcy by a decree of the court.

That N. W. M'Connell, a citizen of Hartsville and State of Tennessee, was appointed the assignee in bankruptcy of the said Gideon Gifford; that in the return of the said Gifford, bankrupt, in his schedule A, setting forth a list of his liabilities and indebtedness, which was secured by mortgages, deeds of trust, &c., he shows that he was indebted to T. M. P. Hall in the sum of 287.0 dollars; to Winslow Hart in the sum of 1,500 dollars, but say this claim is subject to credits; to R. A. Bennett in the sum of 300 dollars, which he says is subject to credits; to John W. Head in the sum of 500 dollars, which he says is subject to credits; and to Jo. G. Gifford in the sum of $400, which he says is subject to credits. This said schedule return of the said bankrupt was duly sworn to by him, as required by law, which said schedule will be filed on the hearing of this cause; all of these sums he returned as secured by deeds of trust.

Your orator would further show to your hon's that upon an examination of the register's books of Sumner Co., he finds that on the 8th of June, 1866, the said Gideon Gifford made and executed a trust deed to R. A. Bennett, of the following-described property, both real and personal, to wit:

One tract of land lying in the counties of Sumner and Smith, now Trousdale Co., Tennessee, district No. 1, Sumner Co., now a part of the tract extending into Smith Co., containing about 150 acres, more or less, as , viz: On the east by the lands of H. K. Patterson, on the south by the lands of John Reece, on the north by a tract of land formerly owned by G. Donoho, on the west by the lands of Winslow Hart and Richard Averett; also, one other parcel of land in said same co. and district, containing about 3 acres of , bounded on the north by the lands of R. Averett, on the east by the lands formerly owned by G. Donoho, on the south by the same, and on the west by the lands of W. Hart.

Also, a parcel of land in said co. and district, containing about 18 or 20 acres, bounded on the north by the lands of John Hutchings and others, on the east by the lands D. P. Duffy, on the south by the lands of G. Donoho's heirs, and on the west by the lands of R. Averett.

3 Also a tract of land in Smith County, district No. 4, containing about 65 acres, more or less, and bounded as follows: On the north by the lands of M'r's Felsom, on the east by the lands of M'r's Puryear, on the south by the lands of W. H. Hailie, & on the west by M'r's Parter's houses; being one-half of the Summerset tract of land.

Also, the undivided one-half interest in a mill-tract of six & three-quarters acres of land in Smith County, Tennessee, district No. , land and appurtenances thereon, being the land purchased of H. Sadler, on Peyton's Creek, for which he says a deed was made to him and W. H. Gifford, and to which reference is made for the boundaries.

Also, the following personal property, consisting of horses, mules, cattle, sheep, wagons, harness, household and kitchen furniture, &c., all of which is more fully described in the deed of trust of said Gifford to said R. A. Bennett, to which is made; a certified copy of which, from the register's books of Sumner County, is here filed, marked "Exhibit A," and prayed to be taken as a part of this bill.

Your orators further show to your honors, that the said Gideon Gifford had an equity in a tract of land of about two hundred acres, purchased by him from the executor of G. Donoho, for which he agreed to pay some 10 or $11,000; that this said purchase was in parol, and that he had paid some $7,000 or more on this said purchase, leaving one note due and unpaid, on which note suit has been brought by the exec'tor of said G. Donoho, and is now pending to enforce the vendor's lien; that Gideon Gifford expressly repudiated said parol contract for the purchase of said land, and he continued to resist this said suit, to enforce the vendor's lien, and repudiate the said contract, because it was not in writing in any shape or form, up to the time of the sale of his estate by the said McConnell, assignee as aforesaid; that said Gifford returned this debt due the said executor of the said Donoho in his schedule; no proof was ever made of the same before the register in bankruptcy, or other person authorized to authoricate the same, nor has the claim been filed in this cause; that the contract being void for the sale of the land under the statute of frauds, there was and still is due the said Gifford's legal transferee, the said sum of 7,000 dollars, with the interest thereon from the date of the payment of the same, which your orator insists is a prior lien on said land; that this matter, however, is the subject of another suit in your honorable court; that he will file as evidence in this cause the deed of trust executed by said Gideon Gifford to said John W. Head; also, the deed of said bankrupt to his son, Jo. G. Gifford, both of which are of record and properly authenticated; and your orator further shows to your hon's that this deed, made and exe-

cuted by said Gideon Gifford to his son, Jo. G. Gifford, was so made for the alleged consideration of 4,000 dollars, to him, the said Gideon Gifford, paid.

This deed purports to convey the said 7,000 dollars so paid by said bankrupt for said land on parol contract as aforesaid; also, all of his equitable interest in all and several of the property, both personal and real, conveyed by the said bankrupt to said R. A. Bennett in aforesaid deed of trust, which property consists of about 240 acres of valuable lands, upon which there are valuable mills situated; also, a large amount of valuable stock and other personal property, beside his stock in the Gallatin & Hartsville Turnpike Company, which is worth a considerable sum of money.

Your orator states that he is informed that the property conveyed to R. A. Bennett is worth from 12 to $15,000, and the property conveyed to Jo. G. Gifford, besides that to Bennett, is worth from 8 to $10,000, and all this pretended to be conveyed to said Jo. G. by his father, the said bankrupt, for the small and inadequate sum of $4,000, alleged to have been paid to him the said Gideon by his son Jo. G., including the small amount secured in the said deeds of trust aforesaid, which your orator insists have been paid and discharged.

Your orator further shows to your honors that the said Gideon Gifford makes no mention of this last fraudulent conveyance to his said son of this said $7,000 & interest, as well as a large amount of assets besides, for this alleged sum of $4,000 in his schedule in bankruptcy, for the reason that this said fraudulent conveyance was only made some seven and a half months before his petition in bankruptcy was filed, and he knew that it would be apparent to the court that this transaction was a gross fraud upon his creditors, and that his discharge would be refused therefor, and for this reason and for the purpose of enjoying this property after his discharge he fraudulently concealed all these facts and circumstances from the court.

Your orator further charges that the debts set forth in said trust deed to R. A. Bennett were not all due and owing, if any were, at the time of the execution of the deed of trust; that if all or any of them were just, due, and owing then that they have since been paid; that there is nothing due on these said debts described in said trust deed at this time, or if there is anything remaining unpaid at this time it is a very small amount. That no creditor save your orator has ever proven any claim against said bankrupt, either before the register or otherwise, nor has any other claim ever been filed in the cause; and your orator charges that there was a tacit understanding between the bankrupt and many of his creditors that they were not to resist his discharge, that is, those who knew the facts of his devises and schemes, and that he would pay them after his discharge, which your orator is informed and believes he has done in some instances, but not from any high moral sense of obligation, but to complete his scheme of fraud many of his other creditors, your orator among the rest.

And your orator further charges that the said bankrupt, through his agent, attempted to buy your orator off, with the paltry sum of $100, to prevent any attack on or any investigation into his iniquitous frauds, and this he did after his discharge in bankruptcy.

Your orator further charges and insists that if all of these debts were just, due, and owing and unpaid to this time, that the creditors holding said claims have lost their liens on said property, so conveyed, upon which they once existed, for the reason that they failed to come forward and prove their claims against said bankrupt as required by law.

Your orator further shows that on the 10th of June, 1867, the said bankrupt made the aforesaid fraudulent conveyance to his son Jo. G. Gifford, for the said alleged sum of $4,000, of all the property, effects, equities, &c., described in the deeds of trust to John W. Head and R. A. Bennett, an authenticated copy of which is here filed, marked "Exhibit C," and prayed to be taken as a part of this bill, &c., but not to be copied.

Your orator further shows to your honors that said J. G. Gifford
5 was a young man just starting in life and had very limited means, if any at all, and he charges that if he paid the said 4,000 dol's, as is stated in said deed to him, that it was the money of Gideon Gifford, or that it was borrowed from some one else, and that Gideon Gifford, or some one for him or in his stead, paid it back to the one from whom it was borrowed, or to his order or assignee, very soon after it was borrowed, and that the whole thing was a sham, a device and fraud, perpetrated by the son and father, in contemplation of bankruptcy, and for the purpose of remaining in the enjoyment of said lands, tenements, &c.

And your orator specifically charges that the said Gideon Gifford has continued in the use, occupation, possession, & enjoyment of all the property conveyed in the said first deed of trust, from the making of the same up to the filing of the bill, as well as all the property conveyed in the other said deeds of trust, and that there has been no change of use, possession, or ownership of any said property since the pretended sale of said bankrupt to his son, and that none of the said trustees ever made any attempt to wind the said trust deeds, but that said bankrupt has by all said trustees and his son been permitted to remain in the possession and use of said property, and to dispose of, transfer, and sell the same at his own option; therefore your orator charges that this pretended transfer of the said Gideon Gifford to his said son Jo. G. Gifford, as described in said deed to him, was a scheme and device resorted to, in view of said Gideon Gifford's bankruptcy, to cheat and defraud the creditors, and to so cover up the said property as to place it beyond their reach, and all this the said son Jo. G. Gifford well knew.

Your orator charges, as before, that he is the only creditor who has proven any claim against said bankrupt, which he duly did, and that it amounted to some $4,500, and which he filed in the cause.

Your orator further shows to your hon's that the said N. W. M'Connell, as assignee, was compelled to file his report in the cause, and upon the coming in of said report the court ordered the said assignee, N. W. M'Connell, after giving legal notice, to sell all the assets of said Gideon Gifford of every kind and description, and said assignee accordingly, after giving the legal notice as required by the order of the court, sold said assets of said bankrupt at the court-house door, at Nashville, on the day of June, 1871, to the highest bidder, for cash, and that your orator became the purchaser of all of said bankrupt's assets, both real and personal, legal and equitable, for the consideration of $225, which he paid in cash to the said assignee; and that said assignee thereupon made and executed a deed of conveyance to your orator, conveying all of his interest as assignee, &c., which deed or a copy thereof will be filed on the hearing of the cause, as evidence.

Your orator is advised that by this conveyance he became invested with all the rights of property of the assignee of said bankrupt, and also of the rights of said bankrupt himself, in any and all of his estate whatever, and he is advised that he has a right to come into this honorable court to litigate this cause and have his rights determined, not only

as a purchaser at the said sale of the said assignee of the assets of the said bankrupt, but as a bona fide creditor of said bankrupt, who has proven and filed his claims against said bankrupt according to all the due forms of law, and that he has a right, if necessary, to use the name of said M'Connell, as assignee, in the prosecution of this suit as a creditor of said bankrupt; that he hath the right to come into your hon's court to have the cloud removed that has been cast upon
6 the titles of the real estate of the said bankrupt by his fraudulent deeds and conveyances aforesaid, or, if your hon's should be of the opinion that the persons named in the trust deed are entitled to the satisfaction of their claims, whatever may be just, due, and owing at this time on those original claims as secured in said deed, then your orator insists that the same be sold upon such terms as seemeth fit to the court, and the proceeds applied, first, to the payment of the said debts specified in said deed, but no others, that may be just, due, and then owing at this time, according to their priorities, and the surplus paid over to your orator.

Your orator is advised that in the event that the said Jo. G. Gifford did pay for the said assets, equities, &c., claimed to be purchased of his father, with his own individual money, still he is in no better attitude, for if he did make the purchase he did so cognizant of the condition and circumstances of his father's finances; therefore he had notice of the cause of said sale, which your orator is advised is a fraud in fact, and that he cannot recover his $4,000 even if he did pay it out of his own funds. That he did thus pay it your orator denies, and charges that even now the said Jo. G. Gifford is not a man of such means as to enable him to raise $4,000 and give it away or tie it up in a lawsuit for years, as is claimed he has done in this case.

Your orator is advised that under a proper construction of the provisions of the bankrupt law, that bona fide creditors, secured by mortgage or deed of trust, are barred from the collection of their claims unless they come forward and prove their claims against the bankrupt before the register in bankruptcy, or otherwise as provided by law, and they lose their lien given them by said mortgage or deed of trust, by failing so to prove their claims, but this is a question of law which he submits to the court; but if as your orator is advised, then the deed of trust to said R. A. Bennett is a cloud upon your orator's title, which the court will remove; and the satisfaction of all claims against said Gifford out of his estate will be denied and refused, save and except that of your orator.

Your orator further charges that W. H. Gifford had little or no interest in said mills spoken of and described in said trust deeds at the time said deeds were made, and that he has none now, but that they belong to Gideon Gifford.

The premises considered, your orator prays that the parties mentioned in the caption be made parties defendants: that copies issue, that subpœnas issue and be served on Jno. W. Head, R. A. Bennett, Jos. G. Gifford, W. H. Gifford, Winslow Hart, and T. M. P. Hall, and they all be required make their appearance by the Sept. rules, and answer, &c., by the Oct. rules next; that the sale of Gideon Gifford to Jo. G. Gifford be declared fraudulent, null, and void, and the equities, personals, &c., therein attempted to be conveyed, be decreed to your orator, or if your hon's should be of opinion that he is not entitled to all of the equities therein, then that his prorata in the same be decreed to him; that the payment of $4,000 by Jo. G. Gifford, if found to have been paid with his own money, be declared to have been made in fraud,

and with notice that he is not entitled to recover the same; that the debts included in the said deed of trust be declared to be invalid as a lien on the estate of the said bankrupt; that all claims against said bankrupt which are unproven at this time, whether secured by mortgage, deed of trust, or otherwise, be declared invalid as to the estate of said bankrupt and not entitled to payment out of the same in part or in whole, and that the cloud upon the titles, caused by the conveyances, be removed, and that the titles be decreed to your orator free from the liens of the same; but if your hon's should be of the
7 opinion that the debts mentioned in the said deed are entitled to payment out of the estate of the said bankrupt, then that all of the said property of every kind and description be sold upon such terms as the court may order, and after the payment of all said debts enumerated in said deed of trust which may be found just, due, and owing and unpaid out of the proceeds of the sale, that all the balance be paid to your orator; that if your hon's should find that W. H. Gifford has any interest in said mills, as described in said deeds, &c., that you will order a sale of the same, in order to a division of the value of the same, between said W. H. Gifford and your orator, or whomsoever your hon's should be of opinion is entitled to a pro rata interest in the same; and that he be required to state an account of the partnership, and to grant him all other and further relief that the equity of his cause demands, as he will ever pray, &c., to the end therefore that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief full, true, direct, and perfect answers make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer, that is, those that are specifically called on to answer.

SHACKELFORD AND HELMS,
Sol's for Complainant.

Foot note and interrogatories.

1st. Jno. W. Head, R. A. Bennett, Winslow Hart, and T. M. Phall will answer specifically and respectively whether or not Gideon Gifford, the bankrupt, owed them the amount specified in said deed of trust to R. A. Bennett, or any part thereof, at the time of the making of the same; if so, they will answer whether or not the same has not been paid them since the making of said trust-deed; if so, when and by whom. They will also state how much is due and owing on said debts at this time, if anything.

2nd. R. A. Bennett will answer specifically what disposition has been made by the personal property which was conveyed to him in the deed of trust, made June, 1866, by Gideon Gifford, also if he ever took any steps to close the said deed of trust, and whether or not said Gideon Gifford has not been in the possession and use of the property conveyed to him in the said deed of trust since the making of the same up to the present time; if not, he will state what disposition has been made of each article enumerated in said trust deed, and who has been in the use and possession of the said mills since 1866 up to the present time, and whether or not Gideon Gifford has not been interested in the said mills all the time, and the value of the same; and whether or not W. H. Gifford is not now in the use and possession of the Donoho tract of land

of about 200 acres, and whether or not said Gideon Gifford did not repudiate the contract for said Donoho tract, and try to set the sale aside for the statute of fraud, and whether or not said Gideon Gifford has been receiving the rents, issues, and profits of the different tracts of land described in said trust deed from 1866 up to the present time; if not, then state who has. He will also set forth and exhibit the title-papers to the said several tracts conveyed to him in said deed of trust, and where there are no deeds he will state the condition of the same and why there are no deeds; he will also state the value of all
8 the tracts of land conveyed to him in said trust deeds; also the value of the mills and the mill-site; also the value of the Donoho tract.

3rd. Jo. G. Gifford will specifically answer whether or not the 4,000 claimed to have been paid by him to his father, Gideon Gifford, for the equity of 7,000 dollars in the Donoho tract of 200 acres of land, besides a vast amount of other lands, personalty, mills, turnpike stock, &c., described in said deed to him of the 10th June, 1867, was his own individual money, all of it or any part of it. If he answers that all of it was his own, he will then show specifically where, when, and how he made it or obtained it. If he states that only part was his, then he will state specially how much of it was or is his, and then set forth and show where, when, and how he made it or obtained it, and at what age he made it.

4th. J. G. Gifford will specifically state whether or not the $4,000 so claimed to have been paid by him to his said father did not belong to his father; or, if not to his father, did not he or the father, or some one for one or both of them, borrow the said $4,000 or a part of it from some one for the purpose of making the transfer, and was it not returned to the one from whom it was borrowed or obtained immediately or in a very short time after; and if after he states that the $4,000 or any part of it was his own individual money, then he will state whether or not all or a part of it has been paid back to him, his order, or assignee, and, if only a part, then how much.

6th. Jo. G. Gifford will state the number of shares his father had in the Hartsville and Gallatin Turnpike Co. that is transferred to him in the said deed of June, 1867, or how many dollars constitute a share, and whether or not the said road does pay or has paid any dividends since 1867; if so, how much.

7th. W. H. Gifford will set forth and exhibit his title, if any he has, to any part in the said mills spoken of in said deeds, and how he obtained said title; and he will also state if there are more than one mill on the premises in which Gideon Gifford had an interest or owned; and he will also state who has been running said mills every year from 1866 up to the present time.

UNITED STATES OF AMERICA,
Middle District of Tennessee, at Nashville:

This day personally appeared before E. R. Campbell, clerk of the circuit court of the U. S. of America for the middle district of Tennessee, at Nashville, James Bankhead, the complainant in the within bill, who makes oath that the matters and facts therein stated of his own knowledge are true, and those on information he believes to be true.

Subscribed and sworn to before me this Aug. 1st, 1871.

E. R. CAMPBELL, *Clerk.*

9 *Exhibit A to bill of J. Bankhead vs. R. A. Bennett et als.*

For the consideration of five dollars to me in hand paid, and the other consideration hereinafter mentioned, I have this day bargained and sold and do hereby transfer and convey unto R. A. Bennett and his heirs the following property, to wit:

A tract of land in Sumner Co., dist. No. 1, part of the tract extending into Smith Co., containing about 150 acres, more or less, and bounded as follows, to wit: On the north by the tract of land formerly owned by G. Donoho, on the east by the lands of H. K. Patterson, on the south by the lands of Jno. Reece, and on the west by the lands of W. Hart and R. Averett; also one other parcel of land in said co. and dist. containing about 3 acres, bounded on the north by the lands of R. Averett on the lands formerly owned by G. Donoho, on the south by the same, and on the west by the lands of W. Hart; also a parcel of land in Sumner Co. and dist., containing about 18 or 20 acres, bounded on the north by the lands of Jno. Hutchings and others, on the east by the lands of P. Duffy, on the south by the lands of G. Donoho's heirs, and on the west by the lands of R. Averett; also a tract of land in Smith Co., dist. No. 4, containing about 65 acres, more or less, and bounded on the north by the lands of M'r's Felson, on the east by the lands of M'r's Purgib, on the south by the lands of W. H. Hale, and on the west by M's Porter's houses, being one-half of Summerset tract of land; also my undivided half interest in a mill tract of six acres and one-fourth of land in Smith Co., Tennessee, dist. No. , and lands and appurtenances thereon, being the land purchased of H. Saddler, on Peyton Creek, for which a deed is made to myself and W. H. Gifford, and to which reference is made for the bounderies, to have and to hold said several tracts of land unto the said R. A. Bennett and heirs forever.

I also convey unto said Bennett the following personal property, to wit: 2 horses, one sorrel horse and one roan mare; three head of mules, one black and two sorrels; three head of cattle; 65 head of sheep; 25 head of stock hogs; three bureaus; one press; two cupboards; one sugar chest; one doz. chairs; one center-table; six feather beds, bedsteads, and clothing; one large box and clothing; one clock; one six-horse wagon and four sets of gear, including harness for the wagon; one horse-cart; six steel turning plows; four beam plows; two harrows. To have and to hold said lands and personal property to the said R. A. Bennett and his heirs forever; I will warrant and defend the title to said lands and personal property unto the said R. A. Bennett and his heirs against the lawful claims of all persons whatever.

But this deed is made for the following uses and trusts, and for no other purposes; that is to say, I am indebted to W. Hart as security for E. P. Gifford's estate, judgment rendered in the circuit court of Sumner for about $650 and cost; also to said Hart by note for about $850, with R. A. Bennett and W. F. Sandersme, securities, said note being given several years since, date not recollected; also to said Hart by account about the sum of $250; also to Jno. W. Head in the sum of $500 by note and account for professional services; also to R. A. Bennett in the sum of $300 by note and account, the date, &c., not recollected; also T. M. P. Hall, judge, for about the sum of $250, which is enjoined in the chancery court at Gallatin, and R. A. Bennett and E. T. Seay, securities on the injunction bond. This is intended to secure said securities should the chancery court decide against me.

Now I am desirous of securing said debts, and this deed is made for

the purposes of should I pay or cause said debts to be paid on or
10 before the 1st day of January, 1868, then this deed to be void.
If I do not pay said debts by the time, the said trustee, after giving 20 days' notice in writing of the time and place of sale, then said trustee will proceed to sell said property after giving the 20 days' notice in writing of the time and place of sale, notice in a newspaper being waived, and sell said property for cash, and first pay the cost and then pay the debts.

In addition to the above debts, I am indebted to my son, Joseph G. Gifford, in the sum of about $550, being the amount he paid to Jacob Ellen on a note of mine. Said debt is to be on a general footing with the others. The note I gave to Ellen will share the amount he paid for me.

GIDEON GIFFORD.

G. G., 18' June, 1866; $3.50.

STATE OF TENNESSEE,
Sumner County:

Personal' appeared before me, John L. Bugg, clerk of the county court of said county, Gideon Gifford, the bargainor, with whom I am personal' acquainted, and who acknowledged that he made and executed the foregoing instrument for the purposes therein contained.

Witness my hand at office, 18' day of June, 1866.

JOHN L. BUGG, *Clerk*,
By J. A. TROUSDALE, *D. C.*

Received for registration, 18th June, 1866, at 3 o'clock p. m.
Registered and examined the same day received.

RO. HALLUM,
Register S. Co.

STATE OF TENNESSEE,
Sumner County:

I, Ro. Hallum, register of said county, do hereby certify that the within deed of trust and certificate are duly registered in my office, in bill-book M, page 433 & 436, and I do further certify that the foregoing is a true and correct copy of the same.

Given under my hand the 16th day of June, 1871.

RO. HALLUM,
Register S. Co.

11 *Exhibit B to bill of James Bankhead vs. Bennett et als.*

Whereas, Gideon Gifford and R. M. Potts are indebted to W. S. Alexander by judgment rendered by the circuit court of Smith County, Tennessee, in favor of A. Moore, for the use of W. S. Alexander, on the 31st day of March, 1866, for the sum of $1,460.30, and costs, and whereas said judgment is rendered on a note for the purchase of land, &c., and said R. M. Potts is securety for said Gifford, and whereas the said Gideon Gifford, desires further time for the payment of said indebtedness.

Now, to secure said debts, the said Gideon Gifford transfers and conveys to John W. Head his equitable interest in the tract of land on which he lives, in Sumner County, Tennessee, district No. 1, bounded on the north by the land of Averett and others; on the east by the lands of M'r's Goldman Donoho, and on the south by another tract of Gifford's, and on the west by Richard Averett and others. Said Gifford transfers

all the right, title, and interest he has in said lands, whatever it may be, to John W. Head and his heirs.

Said Gifford has paid about $7,000. The executors of G. Donoho do not recognize any valid purchase of the land, the same not being in litigation, and it is the intention of this conveyance to embrace the right that said Gifford may have in said fund and the equities growing out of the same in the land, and all such rights as the said Gifford may have acquired, with the distinct understanding on his part that the conveyance is not to effect his right to resist any further payment on the land, any further enforcement of the pretended purchase of the same. If said debt and cost are not paid to the said Alexander on or before the 1st of March, 1868, then the said John W. Head is authorized and required to take such steps as are necessary to enforce payment of the same out of the rights and equities of the Gifford in said lands; but to avoid any misapprehensions, said Gifford expressly states that there was no contract or memorandum in writing in regard to the sale and purchase of said land, and he is not bound to take the same.

February 18th, 1867.

GIDEON GIFFORD.

Attest:
S. M. FITE,
JOS. FELSOM.

STATE OF TENNESSEE,
Smith County:

Personally appeared before me, E. W. Turner, clerk of the county court of said county, the within-named bargainer, with whom I am personally acquainted, and who acknowledges that he executed the within instrument for the purposes therein contained.

Witness my hand at office, 19th of February, 1867.

E. W. TURNER, *Clerk.*

Rec'd for registration 27th, 1867, at 8 o'clock a. m.

RO. HALLUM,
Reg'r S. C'ty.

Registered and examined the 28th Feb'y, 1867.

RO. HALLUM,
Reg'r S. C'ty.

STATE OF TENNESSEE,
Sumner County:

I, Ro. Hallum, register of said county, do hereby certify, that the within instrument and certificate are duly registered in my office, in bill-book A M, page 499; and do further certify that the foregoing is a true correct copy of the same.

Given under my hand this 16th day of June, 1871.

RO. HALLUM,
Reg'r S. Co.

12 *Exhibit C.*

For the consideration of four thousand dollars, to me in hand paid, I have this day bargained and sold, and do hereby transfer and convey, unto J. G. Gifford all my right, title, and interest in and to the tract of land I live on, being the Donoho tract. I bargained for said land, but no writing was entered into, and I have paid upwards of seven thousand

dollars on said land, and have an equitable interest in the same. The land referred to is in Sumner County, Tenn., district No. 1, bounded on the north by the lands of Richard Averett and others; on the east by the lands of M'r's Gouldman Donoho; on the south by another tract of Gid. Gifford, and on the west by the lands of Richard Averett and others, said to contain 200 acres.

Whatever interest I may have in the land and the money paid on the same, not intending hereby to affirm the contract, which was a verbal one, I hereby transfer to the said J. G. Gifford, but this transfer is subject to a deed of trust executed by me to J. W. Head, for the benefit of W. S. Alexander, on the 18th February, 1867, and registered in the register's office of Sumner County, and that debt is to be paid.

I also, for the consideration aforesaid, sell, transfer, and convey unto the said J. G. Gifford my tract of land in Sumner County, and a part in Smith County, district No. 1, Tenn., bounded on the north by the Donoho lands before described; on the east, by H. K. Patterson; on the south, by Big Goose Creek; and on the west, by W. Hart and R. Averett, containing about one hundred and twenty-five acres.

Also, for the consideration aforesaid, three other parcels of land in said county and State and district, one of three acres, purchased of A. J. Branham; one of R. Averett of about three acres, lying of' his tract where he lives and adjoining the pike, for which I have paid but have no deed. One other of about 15 acres, lying on the north of where I now live, adjoining the land of P. Duffy, R. Averett and others, and for which I have a title-bond for the consideration aforesaid, sell, transfer, the mill and mill-site on Peyton Creek, Smith County, Tennessee, bounded on the north *north* by Peyton Creek; on the east by Hulett Saddler; on the south and west b' said Saddler, containing about 6 and 3-4 acres, more or less. W. H. Gifford owns one-half the mill and appurtenances, but has authorized me to sell the same, and will join in the conveyance of the above lands in Sumner, and the mill and lands are included in a deed of trust to R. A. Bennett, as trustee, and is on record in Sumner and Smith Counties, and this conveyance is made subject to said trust and is not intended to interfere with the same.

For said consideration I also transfer and convey one piece of land in Sumner County, Tenn., district No. 1, bounded on the north by the land of Wiley Parker; on the east by the land of John Hutchings; and on the south and west by the same, containing about ten acres, more or less.

I also, for the said consideration, sell and convey to the said J. G. Gifford all my right, title, and interest in the Carthage and Hartsville Turnpike, transferring my interest, being about $3,000, lands and debts and claims against the company. This conveyance is intended to include the debts and claims I have on said company, and all my interest of any kind in it.

I will warrant and defend the right and title to my interest in the property herein described and set forth unto the said J. G. Gifford, his heirs and assigns, against the lawful claims of all persons whatever.

June 10, 1867.

GIDEON GIFFORD.

13 STATE OF TENNESSEE, *Sumner Co.:*

Personally appeared before me, John L. Bugg, clerk of the county court of said county, Gideon Gifford, the bargainer, with whom I am personally acquainted, and who acknowledged that he m'de and

executed the within instrument for the purposes therein contained. Witness my hand at office this 10th of June, 1867.

JOHN L. BUGG, *Clk.*
By J. A. TROUSDALE, *D. C.*

Rec'd for registration 10th June, 1867, at 3 o'clock p. m.
Registered and examined the same day rec.

ROB. SALLENN,
Reg'r of Sumner Co.

STATE OF TENNESSEE, *Sumner Co.:*

I, Robert Hallam, register of said co., do hereby certify that the within instrument and certificate are duly registered in my office in record-book No. 26, and page 103. And I do further certify that the foregoing is a true and correct copy of the same.

Given under my hand this 16th of June, 1871.

ROB'T HALLAM,
Reg'r of Sumner Co.

Exhibit C.

14 On the 19th day of October, 1871, the following demurrer was filed:

Demurrer.

JAMES BANKHEAD
vs.
JO. G. GIFFORD, R. A. BENNETT, JNO. W. HEAD, WINSLOW HART, T. M. P. HALL, and W. H. GIFFORD.

The defendants come and demur to complainant's bill and assign as causes of demurrer:

First. Complainant's bill is multifarious in this. It seeks to set aside the deed of trust executed on the 8th of June, 1866, to R. A. Bennett, as trustee for the benefit of sundry creditors therein named. Also a deed of trust executed to John W. Head, and a deed to Jo. G. Gifford to an equity in the Donoho tract of land. The bill seeks to adjust and settle these various equities, having no necessary connection and to declare said deeds fraudulent and void. These various matters are the subject of distinct and separate suits, and cannot be united in one.

Second. The beneficiaries were not bound to prove their debts before the bankrupt court. Such a course would have been a waiver of their rights under the deed of trust, and hence, they have not forfeited their lien by a failure to prove their debts before the register in bankruptcy.

Third. The complainant by his purchase of the assets at the sale made by the assignee is estopped to controvert the prior liens of the defendants, and also to controvert the validity of said conveyances. The proceedings in bankruptcy set forth said conveyance & liens, and the complainant was a party to said proceedings. He should therefore have attached them in said proceedings. The questions raised by the complainant in his bill are res adjudicata.

Fourth. The bill should only have embraced such allegations and statements as show the compl't's cause of action. Instead of this the evidence relied on to sustain the charges is set out.

Fifth. The bill shows upon its face that Gideon Gifford instituted proceedings and was regularly discharged under the bankrupt law; that the compl't was a party to said proceedings and proved his debt against

said Gifford; that in his schedules accompanying said petition, said Gifford set out the deed of trust to R. A. Bennett as trustee, and the deed of trust to John W. Head, as trustee, &c., and the conveyance to Jo. G. Gifford; that the assets of said Gifford were sold by the assignee, subject to the rights, equities & liens, created by said conveyances, and the compl't by his purchase recognized their validity, and purchased subject to the rights and equities created by them. He cannot in this proceeding attack them for fraud.

Sixth. The complainant does not make out a case entitling him to the relief he asks in this honorable court.

Seventh. The assignee, N. W. McConnell, and the bankrupt, Gideon Gifford, are necessary and proper parties and should be before the court either as complainants or defendants.

Eight. The complainant should have filed objections and made opposition to the granting of the final discharge of the bankrupt Gideon Gifford, upon the ground of the fraudulent assignments and concealments of assets set out in the bill; not having done so, the complainant being a party to the proceedings in bankruptcy by proof of his debt, this court cannot entertain jurisdiction and decree the conveyances to the def't's, Head & Gifford, fraudulent and void.

Wherefore these def'ts pray the judgment of the court as to whether they shall have further answer to the bill, and that they be dismissed.

J. W. & C. R. HEAD, *Sol'rs.*

15 On the 22nd day of November, 1871, the answer of J. G. Gifford, Bennett, Head, Hart, Hall & W. H. Gifford, were filed as follows:

The demurrer and answers of Jo. G. Gifford, R. A. Bennett, Jno. W. Head, Winslow Hart, and T. M. P. Hall, & W. H. Gifford, to the bill of complaint of James Bankhead, filed in the circuit court of the United States for the middle district of Tennessee, sitting in equity at Nashville, against them:

These defendants under the orders of the court doth demur to complainant's bill and assign the cause of demurrer.

First. Comp'lt's bill is multifarious in this. It seeks to set aside the deed of trust executed to R. A. Bennett, trustee, &c.; also the deed of trust to J. W. Head; also the conveyance to J. G. Gifford. These various matters have no necessary connection with each other, and cannot be united in one suit.

Second. The beneficiaries were not bound to prove their debts before the register. Proof of them would have been a waiver of their rights under the act.

Third. The comp'lt by his purchase of the assets at the assignee's sale is estopped to deny any of the prior liens of the defendants, or the validity of the conveyances in the said proceeding in bankruptcy. The questions raised by this bill are res adjudicata.

Fourth. It appears from the bill that Gideon Gifford was regularly discharged under the bankrupt law; that the comp'lt made himself a party to said proceeding in bankruptcy by proof of his debt; that in his schedule said Gifford set out the deeds of trust to Head and Bennett; that the assets were sold by the assignee, and comp'lt became the purchaser; that the sale was made subject to the rights and equities of def'ts. Consequently, comp'lt cannot now attach them for fraud.

Fifth. The comp'lt should have filed objections and resisted the dis-

charge of the bankrupt for the alleged fraud in executing the conveyances mentioned; not having done so, he being a party to said proceedings, this court cannot entertain jurisdiction and declare the conveyances void.

Sixth. The bankrupt Gideon Gifford and the assignee are necessary and proper parties and should have been brought before the court.

Seventh. Complainant by his bill does not make out a case entitling him to the relief he asks. This court according to the case made out by the bill, has no jurisdiction to grant the complainant any relief.

Wherefore, &c.

Respondent for answer to said bill, say that it is true that Gideon Gifford filed his petition in bankruptcy as alleged, and he was duly discharged under the bankrupt act. N. W. McConnell was appointed the assignee in bankruptcy. It is true that said Gifford in Schedule A, set forth a list of debts secured by a deed of trust, executed to R. A. Bennett, as trustee, and the amount of said debts are set forth accompanied with the statement that they are subject to credits. It is true that the said Gideon Gifford on the 8th of June, 1866, executed a deed of trust to R. A. Bennett as trustee, conveying to him the property described in said deed, and set out in the bill. It is also true that the said Gideon Gifford had an equity in a tract of 200 acres of land under a verbal purchase of the same from J. R. Debow, the executor of G. Donoho. He agred to pay some $10,000 for the tract, and did pay on the same over $7,000, as they are informed. It is also true that suit has been brought on the last note by the executor, and said suit is now pending in the circuit court of Trousdale County.

16 The said Gideon Gifford has repudiated said parol contract, and has been and is still resisting the execution of said contract as being within the statute of frauds and illegal and void.

Respondents for further answer says that they suppose it true that said Gideon Gifford returned the debt claimed by the executor in his bankrupt schedule, setting forth its character, and they suppose that said debt was not proved before the register as required by law.

Resp't Jo. G. Gifford, for answer, says that the deed made to him by his father was for the consideration of $4,000, and conveys all his rights and equities in the Donoho tract of land, he having previously conveyed the same to Jno. W. Head, as trustee, to secure a judgment in favor of W. S. Alexander for $1,450, & cost. The conveyance to this resp't also conveys the rights and equities of the said Gideon Gifford in the property conveyed in the deed of trust to R. A. Bennett. Said deed of trust is referred to for a more particular description of said property. After payment of the debts mentioned in the deed of trust, the remainder will be worth not more than $4,500.

The interest in the Hartsville and Gallatin turnpike is worth little or nothing; it is wholly untrue that the property conveyed to R. A. Bennett is worth $12' or $15,000. Respondent did not wish to make said purchase, and would not have done so except for the reasons and under the circumstances hereafter explained. His father asked him a larger price than $4,000; but he positively refused to give any more. Said conveyance to this respondent was not made for the fraudulent purpose of hindering and delaying the creditors of the said Gideon Gifford. It was a fair and bona fide transaction, as will be more fully explained.

This respondent does not know whether the said Gideon Gifford referred to this conveyance in his schedule in bankruptcy, and he is advised that it was not necessary that he should have done so. Said con-

veyance was duly registered and was notice to the compl'ts, and all other persons, of its existence. The two deeds of trust to R. A. Bennett & J. W. Head were referred to and set out, and the complainants could have easily have obtained information relative to the conveyance to this respondent, if not advised of its existence.

This respondent is advised that the conveyance to him being an absolute sale, it was unnecessary for the bankrupt to mention it in his schedules. Said proceedings in bankruptcy were properly conducted and no objection was made by the complainant or other person to the final discharge of said Gifford; and respondent is advised that this was a recognition of the validity of all of said conveyances, and that the complainants are estopped to deny the same. The omission to mention the same conveyance in the schedule was not for any fraudulent purpose, as respondent is informed, but mainly because the att'y of said Gifford advised him that it was wholly unnecessary and improper to do so. It is untrue that it was not mentioned for fear the creditors might oppose the granting of the discharge, nor for the purpose of enjoying the property after the discharge. There was no fraudulent concealment either of the conveyance or the property conveyed. This respondent supposes it true that none of the other creditors have proven their debts; but the fact that the compl't may have proven his debts alleged before the register does not constitute him a bona fide creditor.

This respondent is informed that this whole transaction on the part of the compl't is a scheme of fraud and oppression, and that in fact
17 the said Gideon Gifford does not owe him one cent. His pretended debt is for money advanced on shipments of tobacco to the said Gideon Gifford and to R. Averett, for whom said Gifford was security. The compl't's firm was to sell the tobacco and pay himself. Respondent is informed that the tobacco was shipped to compl't's firm in New Orleans, which was more than sufficient to pay him, but forced and fraudulent sales were made, and said tobacco was sacrificed *and said tobacco was sacrificed*, by the improper and fraudulent conduct of the complainant and his firm. It does not become the complainant to come into a court of equity and ask its active aid in the enforcement of such a fraudulent claim, more especially when he seeks to recover property which he alleges is worth $20,000 or more, and for which he bid the nominal sum of $225.

Respondent is advised that if the complainant can go behind said bankrupt proceeding and attack conveyances, the defendants, who were no parties to, & had no notice of the proof of his debt, can now allege another that he has no valid and subsisting debt against the said Gideon Gifford. All this will more fully appear by the proof.

For further answer this respondent says that it is true that the conveyance was made to him on the 10th of June, 1867, but he again denies that the same was fraudulent & void. It is true that complainant was comparatively a young man, and did not have a large amount of means. He had been in the grocery business in Murfreesboro a few years and had accumulated some means.

Respondent will set out the facts in regard to his purchase and the reasons for the same. The father of respondent's mother, W. Bratton, left her a legacy of near $3,000 in the year 1867. His mother decided to retain this legacy to her sole and separate use, and was not willing that the same should pass to the hands of her husband, the said Gideon Gifford, unless the same was handed to her or vested for her benefit. The said Gideon Gifford was not able to make the purchase of the Donoho tract of land, unless he could use this legacy, and was about to decline

charge of the bankrupt for the alleged fraud in executing the conveyances mentioned; not having done so, he being a party to said proceedings, this court cannot entertain jurisdiction and declare the conveyances void.

Sixth. The bankrupt Gideon Gifford and the assignee are necessary and proper parties and should have been brought before the court.

Seventh. Complainant by his bill does not make out a case entitling him to the relief he asks. This court according to the case made out by the bill, has no jurisdiction to grant the complainant any relief.

Wherefore, &c.

Respondent for answer to said bill, say that it is true that Gideon Gifford filed his petition in bankruptcy as alleged, and he was duly discharged under the bankrupt act. N. W. McConnell was appointed the assignee in bankruptcy. It is true that said Gifford in Schedule A, set forth a list of debts secured by a deed of trust, executed to R. A. Bennett, as trustee, and the amount of said debts are set forth accompanied with the statement that they are subject to credits. It is true that the said Gideon Gifford on the 8th of June, 1866, executed a deed of trust to R. A. Bennett as trustee, conveying to him the property described in said deed, and set out in the bill. It is also true that the said Gideon Gifford had an equity in a tract of 200 acres of land under a verbal purchase of the same from J. R. Debow, the executor of G. Donoho. He agred to pay some $10,000 for the tract, and did pay on the same over $7,000, as they are informed. It is also true that suit has been brought on the last note by the executor, and said suit is now pending in the circuit court of Trousdale County.

16 The said Gideon Gifford has repudiated said parol contract, and has been and is still resisting the execution of said contract as being within the statute of frauds and illegal and void.

Respondents for further answer says that they suppose it true that said Gideon Gifford returned the debt claimed by the executor in his bankrupt schedule, setting forth its character, and they suppose that said debt was not proved before the register as required by law.

Resp't Jo. G. Gifford, for answer, says that the deed made to him by his father was for the consideration of $4,00.), and conveys all his rights and equities in the Donoho tract of land, he having previously conveyed the same to Jno. W. Head, as trustee, to secure a judgment in favor of W. S. Alexander for $1,450, & cost. The conveyance to this resp't also conveys the rights and equities of the said Gideon Gifford in the property conveyed in the deed of trust to R. A. Bennett. Said deed of trust is referred to for a more particular description of said property. After payment of the debts mentioned in the deed of trust, the remainder will be worth not more than $4,500.

The interest in the Hartsville and Gallatin turnpike is worth little or nothing; it is wholly untrue that the property conveyed to R. A. Bennett is worth $12' or $15,000. Respondent did not wish to make said purchase, and would not have done so except for the reasons and under the circumstances hereafter explained. His father asked him a larger price than $4,000; but he positively refused to give any more. Said conveyance to this respondent was not made for the fraudulent purpose of hindering and delaying the creditors of the said Gideon Gifford. It was a fair and bona fide transaction, as will be more fully explained.

This respondent does not know whether the said Gideon Gifford referred to this conveyance in his schedule in bankruptcy, and he is advised that it was not necessary that he should have done so. Said con-

veyance was duly registered and was notice to the compl'ts, and all other persons, of its existence. The two deeds of trust to R. A. Bennett & J. W. Head were referred to and set out, and the complainants could have easily have obtained information relative to the conveyance to this respondent, if not advised of its existence.

This respondent is advised that the conveyance to him being an absolute sale, it was unnecessary for the bankrupt to mention it in his schedules. Said proceedings in bankruptcy were properly conducted and no objection was made by the complainant or other person to the final discharge of said Gifford; and respondent is advised that this was a recognition of the validity of all of said conveyances, and that the complainants are estopped to deny the same. The omission to mention the same conveyance in the schedule was not for any fraudulent purpose, as respondent is informed, but mainly because the att'y of said Gifford advised him that it was wholly unnecessary and improper to do so. It is untrue that it was not mentioned for fear the creditors might oppose the granting of the discharge, nor for the purpose of enjoying the property after the discharge. There was no fraudulent concealment either of the conveyance or the property conveyed. This respondent supposes it true that none of the other creditors have proven their debts; but the fact that the compl't may have proven his debts alleged before the register does not constitute him a bona fide creditor.

This respondent is informed that this whole transaction on the part of the compl't is a scheme of fraud and oppression, and that in fact
17 the said Gideon Gifford does not owe him one cent. His pretended debt is for money advanced on shipments of tobacco to the said Gideon Gifford and to R. Averett, for whom said Gifford was security. The compl't's firm was to sell the tobacco and pay himself. Respondent is informed that the tobacco was shipped to compl't's firm in New Orleans, which was more than sufficient to pay him, but forced and fraudulent sales were made, and said tobacco was sacrificed *and said tobacco was sacrificed*, by the improper and fraudulent conduct of the complainant and his firm. It does not become the complainant to come into a court of equity and ask its active aid in the enforcement of such a fraudulent claim, more especially when he seeks to recover property which he alleges is worth $20,000 or more, and for which he bid the nominal sum of $225.

Respondent is advised that if the complainant can go behind said bankrupt proceeding and attack conveyances, the defendants, who were no parties to, & had no notice of the proof of his debt, can now allege another that he has no valid and subsisting debt against the said Gideon Gifford. All this will more fully appear by the proof.

For further answer this respondent says that it is true that the conveyance was made to him on the 10th of June, 1867, but he again denies that the same was fraudulent & void. It is true that complainant was comparatively a young man, and did not have a large amount of means. He had been in the grocery business in Murfreesboro a few years and had accumulated some means.

Respondent will set out the facts in regard to his purchase and the reasons for the same. The father of respondent's mother, W. Bratton, left her a legacy of near $3,000 in the year 1867. His mother decided to retain this legacy to her sole and separate use, and was not willing that the same should pass to the hands of her husband, the said Gideon Gifford, unless the same was handed to her or vested for her benefit. The said Gideon Gifford was not able to make the purchase of the Donoho tract of land, unless he could use this legacy, and was about to decline

making the trade. Thereupon his wife proposed to him that she would consent for him to draw her said legacy if he would apply same to the purchase of said tract of land, and have the title made to her to the extent of said legacy and secure to her an interest in the said tract of land in proportion to the amount of the money thus furnished by her. The said Gideon Gifford accepted this proposition, and received said fund and applied it to the payment on the land. It was expressly agreed by the said Gideon Gifford & his wife that he was to invest said fund in this tract of land for her sole use and benefit, and that he have the title so fixed as to secure her the land in proportion to the amount thus paid. He could not have obtained possession of said fund but for this agreement.

After the close of the war, respondent's mother became uneasy as to the security of her fund, or the title to the land, as the same had not been paid for, and the contract was verbal and within the statutes of fraud. She insisted that something should be done to secure her the title, or to secure her fund, with the interest thereon. She threatened to institute legal proceedings to secure herself; and under these circumstances this respondent was applied to to make the purchase. He did not wish to make it, and would not have done so, but for the gratification of his mother and to save any ill-feeling between his parents. Respondent did not have the means to risk in this way any length of time.

18 To alleviate this difficulty his mother agreed, if he made the purchase, to loan him the money or to permit him to retain the use of it until she needed it, or he could realize it out of the property. Respondent therefore made the purchase and paid the money over to his father, and the same was returned to him as a loan, and he executed his note to his mother for the amount, which she still holds against him.

This formality of paying over the money and loaning it to him was had to satisfy his mother. She thought it was necessary to the protection of her rights. Respondent felt assured that simply making the purchase and executing the note to his mother would have been sufficient, but he was willing to conform to her wishes, even in this unnecessary formality. Respondent had some means in hand and borrowed others and paid the $4,000 in money, which was returned to him as before explained. This is the whole transaction, and it was all done in good faith and for the purposes explained.

Respondent is advised that at the time of the sale to him, the said Gideon Gifford had no expectation or intention of filing his application to be discharged under the bankrupt law. But if such was his purpose, this respondent had no intimation or suspicion of the same; all he done was in good faith and for no fraudulent purpose whatever. After said purchase by this respondent, he rented the property to his father for four hundred dollars per year. His father agreed that he would apply the rent, as well as any other means he might be able to spare, to the extinguishment or payment of the debts secured by the deeds of trust executed to R. A. Bennett and Jno. W. Head. Resp't agreed with the said Gideon Gifford, to repay him whatever means he might pay on the debts secured in the deeds of trust, out of his own means over or above the rent of $400. Under this agreement his father has made some payment which will be more *ful* fully spoken of hereafter.

It is true that the said Gideon Gifford has remained in possession of the property; but the sale was not made for the purpose of enabling him to remain in possession of the same, or in contemplation; he has remained in possession under the agreement and circumstances stated.

Respondent for further answer says it is true that the assignee took no steps to set aside either the deeds of trust or the conveyance to this respondent. Said assignee knew full well that said conveyance was not fraudulent, and that it would be useless to institute proceedings for that purpose. It is true that said assignee, McConnell, was compelled to file his report, and the court ordered a sale of the assets of said Gifford. All this was done at the instance of the compl't, and with a view to harrass the def'ts, and for the fraudulent purpose of attempting to collect his most unjust claim. This respondent supposes it true that the assets of the said Gideon Gifford were sold by the assignee, as alleged, and that the compl't became the purchaser at the sum of $225. But respondent denies that said purchase vested the compl't with any right to the property included in said conveyances, or with the right to have the same set aside on the ground of fraud, even if fraud intervened. By making himself a party to said proceeding in bankruptcy, by proof of his alleged debt, he made himself bound thereby; he made no objection to the discharge of the bankrupt upon the ground that said conveyances were fraudulent, and this question raised in his bill is res adjudicata. The action of the court in said proceedings are final and conclusive as to compl't, and as to the validity of said conveyances. Respondent supposes it true that *that* the assignee executed a conveyance to the compl't as alleged. This, however, confers no right upon him, and said conveyance does not authorize him to attack the
19 conveyances refer'ed to. If the compl't has the rights conferred upon the assignee, the latter should have been made a party, as well as the said Gideon Gifford, who has bound himself by the usual covenan's of warranty.

It is not true that W. H. Gifford has little or no interest in the mill and mill-property. He was the owner of one-half of the mill-property, subject to certain indebtedness specified in the deed of trust executed by him, in which will be filed on the hearing of the cause. The court will see that the said W. H. Gifford ratified the sale made by to this resp't; and by the terms of the sale the claims secured by the deed of trust were to be first paid. Those included in the deed of trust executed by W. H. Gifford amount to near $2,000.

Respondents for further answer say that it is untrue that the debts mentioned in the deed of trust to R. A. Bennett were not due at the time of the execution of the said deed. Some payments have since been made which will be set out. As before explained, resp't J. G. Gifford took the conveyance subject to the prior liens created by the deeds of trust executed by Gideon Gifford and W. H. Gifford. By an agreement with the said Gideon Gifford he was *to* authorized to pay any of the trust debts and to look to resp't Jo. G. Gifford for the same, less the rent of $400, as explained. The said Gideon Gifford thought he would be able to pay several of the trust debts, easier than raising the money. Under this agreement the said Gideon Gifford had paid on the debt of W. Hart about the sum of $600, in a note on Geo. W. Nuller and otherwise. The debt due T. M. P. Hall has all been paid, amounting to $410.90. It was paid by the said Gideon Gifford. Resp't, Jo. G. Gifford, has paid to R. A. Bennett about $282 on the am't due him. There are mutual accounts between the resp't, J. W. Head and Gideon Gifford. Resp't Head had been attending for a number of years to business for said Gifford, but at the time of the execution of said deed of trust the acc't was not made out. The am't was put down at $500, with the understanding that the true amount of the account, whether more or less than $500, should be settled under the agreement aforesaid; the

said Gideon Gifford had paid said Head in lumber &c., the sum of $432, as shown by the account here filed as part of this answer. A part of this account goes to the payment of fees due said Head for services rendered since the execution of the said deed. The account of said Head is here filed, Exhibit B, as part of this answer. The court will see that there is a balance of $ due said Head.

He resp'ts for further answer say that no steps were taken to close the deed of trust for the reason that by the sale to the def't Jo. G. Gifford he was to discharge the debts due, and resp'ts were willing to favor him and his father so far as they could without losing their liens. The personal property remained with the said Gideon Gifford, who was paying off the debts as before explained. By agreement between the said Gideon Gifford and resp't J. G. Gifford the former was permitted to retain possession of the personal property, he agreeing to account for the value of the same in paying the debts aforesaid. Some of the stock died; some has been used. The furniture, &c. is on hand. Resp't Bennett has no title-papers covering the several tracts of land conveyed in the deed of trust, and knows nothing about the condition of the title. Resp'ts suppose the mill and mill-lsite is worth some $2,500. The tract of 150 acres is worth about 1,500$, the ten-acre tract is worth 500$, the 3 acres are worth $350, the 18 or 20 acres are worth $450, the Donoho tract of land is worth $7,000 or $8,000, the turnpike debt is
20 worth nothing unless the suit is gained. The debts secured by the several deeds of trust amount to over $7,000, which added to the $4,000, make over $11,000. So the court will see that resp't Jo. G. Gifford has paid the full value of the property.

Resp't Hart for further answer says that he recovered judgment on his debt before the execution of the deed of trust to R. A. Bennett and had a lien on the lands conveyed, but he did not wish to oppress or harass his debtor. It was proposed by the trustee Bennett and the said Gifford that if resp't would wait until the trust was closed he should have his money, and the delay should not operate to his prejudice, but his lien should be perpetuated and he should have priority of satisfaction out of the property conveyed.

Resp't Jo. G. Gifford for further answer says that his firm had on hand $800. The balance of the $4,000 he borrowed of the savings-bank of Murfreesboro' for 5 days. This money he procured to pay the $4,000. He paid it, as before explained, to satisfy his mother, and with the understanding that he was to have the use of it, &c. The money was returned to resp't and he gave his note to his mother. He took the $800 and replaced it in his firm, and the remainder he paid back to the bank.

And having fully answered, def'ts pray to be hence dismissed, &c.

J. W. AND C. R. HEAD, *Sol's.*

STATE OF TENNESSEE,
Davidson Co.:

This day came Jo. G. Gifford before me, E. R. Campbell, cl'k, &c., and made oath that the facts stated in the foregoing answer as of his own knowledge are true, and those stated as upon the information of others he believes to be true.

And also came J. W. Head and made oath that the statement made by him in the said answer are true, to the best of his knowledge and belief.

JO. G. GIFFORD.
J. W. HEAD.

Sworn to and subscribed before me Nov. 22nd, 1871.

E. R. CAMPBELL, *Cl'k,*
By J. W. CAMPBELL, *D. C.*

21 On the 20th of Jan'y, 1873, the answer of R. McP. Smith, guardian ad litem, which is as follows:

The answer of R. McP. Smith, guardian ad litem for W'm W. Gifford, minor heir of Jo. G. Gifford, to the bill of complaint of Ja's Bankhead, No. 1884, filed in the circuit court of the U. S., at Nashville, against Jo. G. Gifford & others.

This resp't, reserving the benefit of all proper exceptions to the numerous imperfections of said bill, for answer thereunto as such guardian ad litem as above mentioned, says that he has no certain knowledge as to the truth of any of the various allegations of the said bill; and that he calls for the proof of such of them as may be material to be proved, and commends his ward to the protection of the court.

Further answering, said guardian says that it appears from the deposition of the comp't, that he purchased in a lump all the assets of the bankrupt mentioned in the bill, and took a general conveyance of all such assets, which very remarkable species of sale on the part of the assignee of said bankrupt appears to said guardian to have been void. Said guardian insists that each item of property contained in the schedule of assets should have been separately sold, and that any other kind of sale is a lumping sale of all the bankrupt's assets at one stroke utterly void.

He also points out to the court that the suit of compl't was not brought within two years of from the date of the qualification of the assignee of said bankrupt, upon which he relies aside from other defenses as a bar to the said suit.

R. McP. SMITH, *Sol.*

Affiant makes oath the *the* averments of the foregoing answer are true to the best of his knowledge, information, and belief.

R. M. P. SMITH.

Subscribed and sworn to before me this Jan. 20th, 1873.

E. R. CAMPBELL, *Clerk.*

22 *Bill of revivor.*

On the 13th day of August, 1872, the compl'ts filed their bill of revivor, which is as follows:

To the honorable judges of the circuit court of the United States sitting in equity at Nashville, &c.:

Your orator, James Bankhead, a citizen of the State of New York, would respectfully represent unto your honors that on the 3rd day of August, 1871, he filed his original bill in your honors' court against Jo. G. Gifford, R. A. Bennett, John W. Head, Winslow Hart, T. M. P. Hall, and W. H. Gifford, all citizens of the middle district of Tennessee, for the purpose of setting aside a fraudulent conveyance of some real estate, choses in action, & other property made to said Jo. G. Gifford by his father, Gideon Gifford, a bankrupt, who at the time of said conveyance was indebted to your orator; and your orator being also the purchaser of his entire estate, both legal and equitable, at said Gideon Gifford's sale and for other purposes; for a more full and complete statement of the facts, &c., reference is here specially made to the said original bill of James Bankhead against R. A. Bennett et als.; that the defend'ts filed their demurrers to said original bill, which were all

overruled; thereupon said Jo. G. Gifford, with the other defendants, filed their answers to the said original bill; that some proof was taken in the cause; that at a term of honorable court subsequent to this, the death of the said Jo. G. Gifford was suggested and admitted, & an order made to revive the same against his legal representatives, &c.

Your orator would further state that he is informed & believes that within the first few weeks, W. C. Duffer, a citizen of Rutherford County, middle district of Tennessee, has regularly administered upon the estate of said Jo. G. Gifford, in the county court of said Rutherford County, and has given bond and security as such administrator as required by law, and has entered upon the discharge of his duties as such administrator.

Therefore your orator charges that he has the right to have this suit revived against said W. C. Duffer, as the administrator of said Jo. G. Gifford, and to have a decree against him upon final hearing as such administrator.

The premises considered, your orator prays your honors that said W. C. Duffer be made a party defendant as the administrator of said Jo. G. Gifford, deceased, by the issuance of process and copy according to the practice of the court; that said W. C. Duffer be compelled to appear and show cause, if any he has, why this suit should not be revived against him as the administrator of said Jo. G. Gifford by the March rules, 1873, of your honors' court; that he answer this bill of revivor by the said March rules, 1873, and that this said suit stand revived against him as such administrator; that a decree be rendered upon the final hearing against said W. C. Duffer, as administrator of the said Jo. G. Gifford, deceased, in the same manner and to the same extent as would have been rendered against said Jo. G. Gifford, if he had not died; that all the relief be granted as prayed for in the original bill in this cause; and to grant him all such other, further, general, and special relief as the equity of his case may demand; as he will ever pray, &c.

SHACKELFORD & HELMS,
Solicitors.

23 UNITED STATES OF AMERICA,
Middle District of Tennessee:

This day personally appeared before me, E. R. Campbell, clerk of the circuit court of the United States for the middle district of Tennessee, at Nashville, James Bankhead, the complainant in the foregoing bill of revivor, who made oath in due form of law that the matters and facts as stated therein are true to the best of his knowledge, information, and belief.

JAMES BANKHEAD.

Subscribed and sworn to before me this Jan'y 28th, 1873.
E. R. CAMPBELL, *Clerk.*

24 On the 10th day of Nov., 1872, the following petition for a receiver was filed:

To the hon'able judges of the circuit of the U. S. of America for the middle dist. of Tennessee, sitting in equity at Nashville, &c.:

Your petitioner, Ja's Bankhead, a citizen of the State of New York, would respectfully show to your hon's that on the 31st day of August, 1871, he filed the original bill in your hon'ble court against Jo. G.

Gifford, R. A. Bennett, Jno. W. Head, Winslow Hart, & W. H. Gifford, to recover certain lands & other property, that he had purchased at the bankrupt sale of the estate of Gideon Gifford. One of said tracts of land contains about 150 acres, bounded as follows, to wit, on the east by the lands of R. K. Patton, on the south by the lands of John Reece, on the west by the lands formerly owned by G. Donohoon, the west by the lands of Winslow Hart & Richard Averett; all of said lands lie in Trousdale Co., middle district of Tennessee; also another tract in Smith Co., in said district, containing 6 and three-fourth acres on Peyton's Creek; being the lands purchased of H. Sadler, upon which said 6 and three-fourths acres tract there is a valuable merchant mill, known as Gifford's mills. The bill in this cause charges that said mills are owned by said Gideon Gifford & one W. H. Gifford, one-half each, & it is admitted in the answer that said W. H. Gifford owns no interest in them; to which said original bill special reference is made for a more particular statement of the facts.

The petitioner further states in said bill, that these said lands and mills, as well as all the other property therein described, were transferred and conveyed by said Gideon Gifford, the bankrupt, a short time before his petition in bankruptcy, for the purpose of defeating his creditors in the collection of their debts due them by him, your petitioner among the number. Said Jo. G. Gifford has answered said bill, and the facts stated show the consideration purporting to have been paid was fictitious, as the money was borrowed to make the payment and then returned to the party loaning it within a few days; that the whole transaction was a scheme & fraud to defeat the creditors of Gideon Gifford.

Your petitioner states that Gideon Gifford has remained in possession, use, and enjoyment of said tracts of land & mills from the date of said pretended sale to his said son Jo. G. Gifford up to the present time; that the said tract of land of 150 acres is valuable, and is still in the use & control of said Gideon Gifford, the bankrupt; that the said 6 & three-fourths acres of land upon which said valuable mills are situated is still in the use, possession, control, & enjoyment of the said Gideon Gifford, the bankrupt.

Your petitioner states that he is informed & believes that said Gideon Gifford is permitting said fine merchant mill to go to rack, waste, & ruin; that he has no insurance on the same; that it is liable to burn down at any time; that if it should it will be a total loss to your petitioner should he gain the suit; they will be so dilapidated, decayed, and injured, that by the time of the termination of this suit, they will have become almost if not entirely worthless & invaluable, to say nothing of the peril of fire; that the whole thing is in imminent danger of waste & destruction; that said Gideon Gifford is permitting the fences around & the house & improvements on the said tract of land of 150 acres, to go to waste and destruction; that they are becoming less valuable every day for the want of *of* repairs and proper care, and that if it is permitted to remain under the control and in the use and possession of said Gideon Gifford or any one under him, that it will become by the time of the termination of this suit, very much depreciated in value, if not utterly valueless, except the mere value of the land, the improvements being one of the essential parts of the value; that the same will be the result with all the property described in said bill; that what rents he receives he is appropriating to his own use & enjoyment to the detriment of the property; and that great damages will result to petitioner from the conduct of said Gideon Gifford to-

wards & with said property, should your petitioner succeed in this suit.

Your petitioner further shows that since the filing of the original bill in this cause, the said Jo. G. Gifford has died insolvent, leaving one child and his widow, who have been made parties def'd'ts to this bill by a bill of revivor; the posthumous infant having since died leaving but one child, the def'dt; that no adm'r has been appointed on the estate of said Jo. G. Gifford; & petitioner is advised that so far as the matters of this petition are concerned an adm'r is unnecessary, as the petition is for the purpose protecting & preserving the property.

The premises considered the petitioner prays your hon's:

1st. That a copy of this petition be served on the said def'd'ts if necessary.

2nd. That a receiver be appointed by your hon's to take possession of all of said property so mentioned as aforesaid, and rent out the same on the best terms possible & to the best advantage for all parties.

3rd. That said receiver be *be* empowered & instructed to take & obtain such insurance upon said mills and other and perishable and imperilled property, as to him may seem m*e*te and expedient for the protection and preservation of the same; and that he be directed and authorized to permit and order such repairs made on said houses and mills and lands as aforesaid, as to him may seem necessary for the protection and preservation of the same.

4th. That said receiver be empowered & authorized to pay for such improvements & insurance out of the rents, issues, and profits of said property.

5th. That said receiver be compelled to make a full and perfect report of his action in the premises to each term of your hon. court at Nashville, until otherwise ordered.

6th. That said receiver be compelled to pay any and all surplus funds that he may receive from the rents, issues, and profits of said property into your hon'ble court.

7th. That said def'd'ts be compelled to appear and show cause, if any they have, why the prayer of this petition should not be granted.

8th. That the clerk of this court be directed to issue a writ of possession to the marshal of this dist. to put the receiver so appointed in the possession and control of said property if necessary.

9th. That said U. S. marshal be directed to execute the same when called upon.

10th. That your hon's will grant him such other, further, gen-
26 eral, & special relief as the justice of this cause may demand, as he will ever pray, &c.

SHACKELFORD & HELMS,
Counsel for Petitioner.

U. STATES OF AMERICA,
Middle Dist. of Tennessee:

This day personally appeared before me, E. R. Campbell, clerk of the circuit court of the U. S. at Nashville, Ja's Bankhead, the petitioner in the foregoing petition, who made oath in due form of law that the matters and facts as stated in said petition are true of his own knowledge; and those on information he believes to be true.

JA'S BANKHEAD.

Subscribed and sworn to before me this 11th day of Nov., 1872.

E. R. CAMPBELL, *Clerk.*

27 On the 18th day of August, 1873, the following bill was filed:

To the honorable judges of the circuit court of the United States for the middle district of Tennessee, sitting at Nashville, Tenn.:

Your orator, E. F. Mulloy, a citizen of Davidson County, Tennessee, would respectfully represent unto your orators that on the 3rd day of August, 1871, James Bankhead, a citizen of New York, filed his original bill in your honor's court against Jo. G. Gifford, R. A. Bennett, John W. Head, Winslow Hart, T. M. P. Hall, and W. H. Gifford, all citizens of the middle district of Tennessee, for the purpose of setting aside a fraudulent conveyance of some real estate, choses in action, and other property made by the father of said Jo. G. Gifford to him, which Gideon Gifford, the father, was a bankrupt, and was, at the time of the said conveyance, indebted to the said James Bankhead, and for other purposes. For a more full and complete statement of the facts, &c., reference is here specially made to the said original bill of James Bankhead against R. A. Bennett et als.

That defendants filed their demurrers to said original bill, which were overruled; and thereupon the defendents answered said bill; that some proof was taken in the case; that subsequently the said Jo. G. Gifford died, which fact was suggested of record and admitted; that then the case was revived by a bill of revivor against W. E. Duffer, the administrator of said Jo. G. Gifford, Lockie Gifford, and W. D. Gifford, the widow and minor son of said Jo. G. Gifford, deceased, all three of whom reside in Rutherford Coun', *county* middle district of Tennessee; that R. McP. Smith was appointed the guardian ad litem of said W. D. Gifford.

That since all these steps were taken, the said James Bankhead has departed this life, and your orator has given bond and security, & taken out letters of administration upon the estate of the said James Bankhead, deceased, on the 11th of August, 1873, in the county court of said Davidson County, Tenn., near two months after his death; and he is therefore advised that he has the right to revive this suit in his name against said defendants, as such administrator.

The premises considered, your orator prays your honors that said R. A. Bennett, Jno. W. Head, Winslow Hart, T. M. P. Hall, W. H. Gifford, Lockie Gifford, W. D. Gifford, W. E. Duffer, and R. McP. Smith be made parties defendents to this bill of revivor by the issuance of copies and subpœnas, according to the practice of the court; that all said defendents be compelled to appear and show cause, if any they have, why this suit shall not be revived in your orator's name, as such administrator, against them, by the first rule-day after service hereof.

That they be compelled to answer this bill of revivor by the October rules, 1873, and that this cause stand revived in the name of your orator as the administrator of said James Bankhead, deceased; that the same decrees be rendered in this cause as would have been rendered had said Bankhead not died, in favor of your orator as such administrator.

That all the relief be granted, as prayed for in the original bill in this cause, and all such other, further, general, & special relief as the equity of the cause may demand, as he will ever pray, &c.

SHACKELFORD & HELMS, *Solicitors.*

UNITED STATES OF AMERICA,
Middle District of Tennessee:

This day personally appeared before me E. R. Campbell, clerk of the circuit court of the United States for the middle district of Tennessee,

at Nashville, E. F. Mulloy, the complainant in the foregoing bill
28 of revivor, who made oath in due form of law that the 'tated therein are true, to the best of his knowledge, information, and belief.

E. F. MULLOY.

Sworn to and subscribed before me August 18th, 1873.

E. R. CAMPBELL, *Clerk.*

29 On the 20th day January, 1872, the complainant filed interrogatories in the office of the clerk of said court, which were crossed by the defendants, and the depositions following were taken and filed by the officer designated in the dedimus, as follows, to wit:

JAMES BANKHEAD
vs.
JO. G. GIFFORD ET ALS.

In the circuit court of the United States for the middle district of Tennessee, sitting at Nashville.

Interrogatories filed by the complainant, to be answered by R. D. Reed' of Murfreesboro, middle division of Tennessee, after the clerk has given the defendants or his counsel, John W. Head & Son, ten days notice of the filing of these interrogatories, according to law. This deposition, when taken, to be read as evidence in the above-entitled cause when heard, which cause is now pending in court, and is at issue.

1st interrogatory. State whether or not you are acquainted with Jo. G. Gifford, a defendant to this suit. If so, state how long *yuo* have known him, and where.

2nd. State whether or not you are the cashier of a bank in Murfreesboro, Tennessee. If you state that you are not cashier, then state whether or not you were an officer in a bank in said place during the year . If so, state what office you held, when, and the name of the bank.

3rd. If you state that you were such a cashier or officer in a bank, and knew said Gifford, then state whether or not the bank in which you were such officer loaned said Gifford a sum of money in , to the sum of some of $3,000 or $4,000, at one time; and state who endorsed the notes for him; whether or not one E. G. Flemming was one of his endorsers thereon. If you state that the bank did not make such a loan, then state whether or not the bank discounted a bill or note for him, endorsed by one E. G. Flemming, about that time, for some three or four thousand dollars.

4th. If you state that the bank, or you, individually, did make such a loan or discount, then state the date and amount thereof; and state for what length of time it was loaned, discounted for, and for what purpose he obtained the money, and what understanding there was between said Gifford and the bank, or from whomsoeve' he borrowed the money, if any understanding, in regard to his returning the money to the bank, or to the lender; and state whether or not he returned the money so borrowed to the bank or lender. If so, how long after he had obtained it before he returned it to the bank or lender.

5th. You will please also state what said Gifford said what he wanted the said money for; and state whether or not he said he did not want the money to invest, but to make a tender or a pretended conveyance,

and would return it in a very few days, or some such language as that? If so, state fully all he said in regard to the obtaining and use of the said sum of money.

6th. If you state that he did not borrow the money of the bank, but of some officer or individual of the bank, then state the name of the party from whom he borrowed or obtained it, and give all the conditions and particulars as fully as herein required of you in case he borrowed or obtained it from the bank.

7th. Do you know, or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answers.

SHACKELFORD & HELMS,
Counsel for for Bankhead.

Cross-interrogatories:

Without waiving legal exceptions to the competency or mode of taking the testimony, the following interrogatories are filed:

Int. 1st. State where J. G. Gifford has lived since you have known him; the kind of business in which he has been engaged; the lenght of time so engaged; and whether he has been a prudent and economical man.

J. W. HEAD & SONS,
Sol'rs for J. G. Gifford et als.

Answers.

JAMES BANKHEAD
vs.
JO. G. GIFFORD ET ALS.

In the circuit court of the United States for the middle district of Tennessee, at Nashville.

Deposition of R. D. Reed, witness for the plaintiff in the above-entitled cause, taked upon interrogatories and cross-interrogatories, on this the 23rd day of February, 1872, at the office of N. B. Black, C. & M., at Murfreesboro, Tennessee, neither party to the said suit being present:

R. D. REED, being duly sworn, deposes and says:

1st. I am acquainted with Jo. G. Gifford, one of the defendents to the above suit, and I have known him since 1865 or '6, and I have known him here in Murfreesboro.

To 2rd. I was cashier of the Murfreesboro Savings Bank from Oct., 1866, to 1870.

To 3rd. I have no recollection of the bank at Murfreesboro, of which I was cashier, having loaned to J. G. Gifford any sum of money, at any time; and if the bank of which I was cashier ever did loan or discount a note for any sum of money to said J. G. Gifford, the books of said bank will show it, though I could not well ascertain the fact unless I had some date to be governed by in examining the papers of said bank, as the transactions of said bank were quite numerous. I have examined the papers of said bank, to some extent, to ascertain the fact of said transaction, if there was any transaction at all, but failed to find any evidence of the same.

To 4th. See answer to 3rd interrogation, above given.
To 5th. See answer to 3rd, above given.
To 6th. See answer to 3rd, above given; and I will also state that I have no recollection of his borrowing any money of any individual, of the bank, or any one else.
To 7th. I know nothing which would be material to either of the parties to this suit, so far as I know.

To cross-interrogatories:

Answer to 1st. Jo. G. Gifford has lived, since I have known him, at Murfreesboro, Tennessee. When I first knew him he was in the family grocery business; and after he had been in that business for some time, he sold out and went into dry-goods, boots, shoe, and hat business, with W. C. Duffer. He is a prudent and economical business man. And further deponent says not.

R. D. REED.

Sworn to and sub'ribed before me the 23rd of February, 1872.
N. B. BLACK, *C. & M.*

31 The foregoing deposition of R. D. Reed was taken by me, and certify that I am not interested in the cause, nor of kin or counsel to either of the parties, and that I sealed it up and delivered it at the post-office in Murfreesboro, Tenn., without its being out of my possession or altered after the same were taken.
Given under my hand at office and under seal of office on this the 2nd of March, 1872.

N. B. BLACK,
C. and M. Chancery Court at Murfreesboro, Tenn.

Filed Jan'y 30th, 1874, the following interrogatories:

JAMES BANKHEAD
vs.
JO. G. GIFFORD ET AL.

In the circuit court of the U. S. for the middle division of Tenn., at Nashville, Tennessee.

Interrogatories filed by the compl't, to be answered by Ja's Bankhead, the compl't in the cause, at Nashville, Tenn., after the cl'k has given the def'ts notice, according to law, of the filing of the inter'g's. This deposition, when taken, to be read as evidence in the above-entitled cause when heard; which cause is now pending in said court, and is at issue.

1st. State your name, age, and residence. If you state that you are a non-resident of the State of Tennessee, then state how long you have been so, and where your family now reside.

2nd. State if you are the plaintiff in this case. If so, state whether or you are acquainted with Jo. G. Gifford, one of the def'ts in this case, and with his father. If yea, then state how long you have known each of them, as near as you can; and if you state you are acquainted with Jo. G. Gifford's father, then give his name, and then state if his father is the same man who took the benefit of the bankrupt law, and whose assets you are now endeavoring to reach in this case. If so, state if you proved a claim against his estate in bankruptcy. If yea, then state if the claim that you charge is due you in the cause is not the

same claim as proved against him in bankruptcy. If yea, then state if it is not all just, due, and unpaid, as charged and proved as aforesaid.

3rd. If you state he is the same man that became bankrupt, then state if his assets were not sold at his assignee's sale at auction in bankruptcy. If yea, then state who became the purchaser, and for what price, and was the money to the assignee in full of the purchase of the same, and did the assignee make the purchaser a deed for all the assets of the said bankrupt? And state who was t'e assignee, if any, and state if there were any higher or better bi's for the assets of the said bankrupt than that of the person who became the purchaser, and state whether the said sale, if made, was advertised. If so, where and in what way. And state where the sale took place, if any made.

4th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination on the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

Cross-examination:

Were you ever a citizen of Tennessee? If so, where, how much of your time since 1864 have you spent in Nashville, Tennessee, and what is your business in Tennessee, and what has been your business, if any, in New York since 1865?

2nd. Had you not pending in the Sumner Co. circuit 'ourt suits against Gideon Gifford for the same claim, proven by you in
32 bankruptcy, and are not said suits still pending in said circuit court at this time?

J. J. TURNER,
Att'y for J. R. DeBow et als.

Cross-interrogatories by J. W. Head, counsel of Jo. G. Gifford et als., to be answered by Ja's Bankhead.

1st. State the consideration of your debt proven in bankruptcy against Gideon Gifford. State all the facts connected with said debt.

2nd. State whether the debt, or any part of the same, or either of the debts proved by you in bankruptcy against said Gifford, was a security debt. If so, for whom was Gifford security? Give the origin and consideration of such debt, and state all the facts connected therewith.

3d. State specifically if Gideon Gifford was not security, or bound in some way for R. Averett, and whether a portion of the indebtedness proven by you against said Gifford was not on account of this liability, and you will state particularly whether or not said indebtedness on shipments of tobacco were made to your firm at New Orleans, and whether you did not sue said Averett in the circuit court of Sumner Co., and also said Gifford and Averett, and whether or not one of the said suits you had against said Averett was not tried, and whether said Averett, by way of set-off or recoupment, did not recover damages against you of some $1,000 or more. State all the facts.

4th. You will state who were your partners at the time Averett and at the time Gifford shipped tobacco to you at New Orleans; also state how the debt became yours, what consideration you paid for them, to whom you paid it, where you paid it, and in what you paid it.

5th. You will file a complete and perfect copy of all tobacco shipped R. Averett to you, or to any firm of which you were a member, since the year 1857; also file a complete and perfect copy of all sales made by you, or any firm of which you were a member, since that

date. State and show the number of hogsheads of tobacco sold by you or your firm for him, to whom sold, where sold, the price for which it sold, and the disposition made of the proceeds of such sales.

6th. State whether or not the debts proved by you in bankruptcy against the said Gideon Gifford did not originate in shipments of tobacco made to you, or to a firm, or to firms, of which you were a member, at New Orleans, and did not said Gifford ship you tobacco to be sold, and did you sell the same? And state the number of *of* hhds. shipped to you or to your firm, where shipped, and when received; also state whether you sold the same, to whom sold, at what prices sold. State all the facts connected with said shipments and sales.

7th. You will file with your answer true copies or statements from the books of yourself, or of any firm or firms of which you were a member, of all tobacco shipped by said Gideon Gifford, or in which he was interested; also true copies of the account of sales of said tobacco, and show where the same was sold, to whom sold, and for what price sold, and the disposition made of the proceeds of said tobacco. State fully and completely all the facts connected with said tobacco.

8th. You will state whether or not you did not sue the said Gideon Gifford in the circuit court of Sumner Co., Tennessee, for the indebtedness you proved against him in bankruptcy, and whether or
33 not said Gifford was endeavoring in said suit to set off or recoup damages against you relative to said tobacco transaction, and whether he did not claim that you was indebted to him, and whether said suit is still pending in said court.

9th int. State whether or not you was a citizen and domiciled in Tennessee at the time you commenced this suit, and whether you did not claim a residence or citizenship in New York, with a view to bringing this suit.

10th int. If you claim to be a citizen of New York, state when you became a citizen of that State; where you were living at the time you filed this bill; how long you had been in New York previous to filing this bill; how much of your time you have spent in New York for the last four or five years, and how much of your time in Tennessee.

11th int. State whether you have voted in any elections since 1866. If so, what elections you have voted in; where you voted, &c. State particularly all the votes your have cast since 1867, when and where you voted, and in the election of what officers.

Answers:

Answer to first interrogatory by complainant. My name is James Bankhead; my age, about fifty-five; my residence, New York since the latter part of 1866.

Answer to second interrogatory by complainant. I am plaintiff; I am not personally acquainted with Jo. G. Gifford; I have been acquainted with Gideon Gifford for a number of years; my information is that he is the father of Jo. G. Gifford; G. Gifford is the same man who took the benefit of the bankrupt law, and whose assets I am now endeavoring to reach in this cause; I proved a claim against his estate in bankruptcy; it is the same claim; it is all justly due and unpaid, as charged and proven.

Answer to third interrogatory. He is the same man who became bankrupt; his assets were sold by the assignee at auction in bankruptcy; I became the purchaser at the price of $225 in full of the purchase of the same; the assignee did make the purchaser a deed for all the assets of said bankrupt; the assignee was N. W. McConnell, of Hartsville, Tenn.; there

were no higher bids than the person who became the purchaser; the sale was advertised in the Republican Banner and the Hartsville Vidette for 30 days previous to the sale; the sale took place at the courthouse door at Nashville, on the 13th of June, 1871.

Answer to the fourth interrogatory of the complainant. I think I have answered everything material in my previous answers.

Cross-interrogatories:

Answer to cross-interrogatory No. 1. I was a citizen of Tennessee from March, 1832, until about the first of Nov., 1866; I have spent much time in Tennessee since 1867, endeavoring to wind up a large unadjusted business; when in New York my business was private.

Answer to cross-interrogatory No. 2. Yes, I had some suits vs. Gideon Gifford in the Sumner County circuit court; I do not know if they are still pending; M'r Turner promised M'r Mulloy and myself to look after some of them; and Guild, Smith and Guild have a draft on James Turner, formerly of New Orleans, drawn by Gideon Gifford in my favor as surviving partner, which was protested for non-acceptance and non-payment; there are other suits brought originally in the name of The Union Bank, but which I afterwards settled with said bank out
34 of my own means; these two notes were for $1,650 each, and in addition there was a note for $641.43 in the hands of the late John J. White for collection. All these constituted Gideon Gifford's liabilities.

To cross-interrogatory by John W. Head:

Answer 1st. The consideration paid to the Union Bank of Tenn. for the two $1,650 dollars notes; this was in 1866, when I had a final settlement with said bank of all my liabilities, direct or contingent.

Answer 2nd. It may have been or it may not; they—I mean R. Averett—were on terms of great intimacy; I have known persons to be security when, in fact, they were partners. If I had the New Orleans books I might explain more concisely, but from the balance-sheets of the office at New Orleans, under date of the 7th of May, 1860, and also the balance-sheets of the same office up to the 20th of February, 1861, and the books of the office at Nashville, which are before me, the indebtedness of the following parties, by the balance-sheet of the 7th of May, 1860, was as follows: Gideon Gifford, $1,067.98; Averett & Dyas, $922.88; R. Averett, $8,615.07; Averett & Stalker, $6,444.18. The amount due by Averett & Dyas of the 7th of May, 1860, was increased when the account was made out, by interest, &c., to $967.50; the account of Gideon Gifford was increased, by interest, &c., to $1,151.43; the account of R. Averett was decreased, by sale of tobacco, by $153.54; the account of Averett & Stalker was decreased, by sales, by $2,746.11; leaving a balance on account current on the 1st of June, 1860, of $3,698.07; and the balance to debit of R. Averett was $8,461.53. These accounts show the amount of indebtedness of each of the before-named parties, at the office at New Orleans, on the 1st of June, 1860. I also paid R. Averett, on one of his drafts, held by the Union Bank of Tennessee, over $1,500 out of my private funds. This arose from a surplus of discount to my credit, which discount amounted to a sum exceeding $34,000, and which was all applied, except the sum above specified, of $1,500, to the payment of various liabilities and endorsements of the firm.

Answer 3d. All the indebtedness of R. Averett, Gideon Gifford, Averett & Dyas, and Averett & Stalker was the result of bad faith on their

part in not shipping tobacco or providing means to protect their indebtedness and liabilities to the houses of McGregor, Alloway & Co., and their successors, McGregor & Bankhead, and also Gideon Gifford, who shipped to other houses. In respect to Averett & Dyas, the books of the Nashville office show this transaction, which was done by R. Averett, viz: H. C. Ellis's balance of $248.50, and interest on the same, $5.87, and cash handed R. Averett on the 22 of November, 1858, $700, commissions for advancing same, $17.50, making a total of $971.87, which was closed by bill of Averett & Dyas on McGregor & Bankhead, in favor of James Bankhead & Co., at three months' date, which bill produced the sum, when discounted by a bank, of $971.87, but which bill was not met by shipments of tobacco; hence his indebtedness, upon which debt Averett & Dyas was sued in the circuit court of Sumner County in June, 1860, upon which, I am informed through John J. Turner, esq., that judgment was rendered against plaintiff, a most singular decision. The Union Bank sued said Gifford & Averett, and I settled the same with the Union Bank out of my own means.

Answer 4th. My partners were George McGregor, N. E. Alloway, from Sept., 1852, until Sept., 1858, when the firm was dissolved, during which time M'r R. Averett shipped tobacco to our firm at New
35 Orleans, and at the expiration of said partnership, M'r R. Averett was considerably indebted to said firm. The account of M'r R. Averett was transferred to the new firm of McGregor and Bankhead, their successors, M'r Alloway having sold his interest to his former partners. M'r R. Averett continued to ship tobacco to the new firm of McGregor and Bankhead till the spring of 1860, but not in sufficient amounts to meet his liabilities. M'r Gideon Gifford drew a large sum of money from the firm at Nashville on the 22nd Feb'y, 1859, through M'r R. Averett. M'r R. Averett also drew a large am't on the same day. I have answered the latter portion of the 4th cross-interrogatory in a former answer.

Ans. 5th. I have not the account of sales book of the New Orleans house before me, but a complete and perfect copy of all sales made was to each shipper rendered as soon after the sale was made as the tobacco could be delivered. The proceeds of the sales of the tobacco were always placed to the account credit of the account of the consignor, and at the end of the business season accounts-current were furnished to each and every shipper of tobacco, showing the balance to the debit or credit of the accounts, as the case may have been. This was the mode and practise of the house, Sept., 1852, till 1860, inclusive.

Ans. 6th. The debt was produced by the non-shipment of tobacco sufficient to cover indebtedness. To whom sold I do not recollect. M'r Gideon Gifford was furnished with account of sales and accounts-current, and he ought to know all about it.

Ans. 7th. True statements and copies were furnished to all the patrons of the house. True copies of sales were furnished all shippers. I do not know in what amount of tobacco M'r Gideon Gifford was interested.

Ans. 8th. I recollect seeing the said Gideon Gifford at Gallatin, Tennessee. There is no truth whatever that said Gideon Gifford talked to me about any transaction in tobacco at that time. I do not know whether said suit is still pending or not. My lawyers can answer that question.

Ans. 9th. I do recollect; I was not a citizen of Tenn. at the time this suit commenced. I did not become a citizen of New York in order

to bring this suit, but claim a right to bring a suit in any court I think proper.

Ans. 10th. I went to New York in the latter part of 1866. I am trying to make a living for my wife and children. I was on a visit to Tenn. on business when I filed this bill. I cannot answer exactly; I was in New York during the three or four years. I have spent much time in Tennessee, Ark., Louisiana, and elsewhere, attending to a large and unadjusted business.

Ans. 11th. Since 1866 I voted for Horatio Seymour for President, and the whole Democratic ticket, at Jamaica, Long Island. Afterwards I removed to the city of New York, and voted the Democratic ticket at the precinct on 34th or 35th street, between 8th and 9th avenues.

The deponent having fully answered, further saith not.

JA'S BANKHEAD.

Sworn to and subscribed before me, Ap'l 9th, 1872.

E. R. CAMPBELL, *Clerk.*

36 On March 11th, 1873, the following interrogatories were filed:

Inter'g'r's filed in the circuit court of the United States for the middle district of Tennessee, at Nashville, to be answered by Jno. W. Head and J. J. Turner, citizens of Sumner Co., Tenn., residing at Gallatin. These depositions, when taken, to be read as evidence on the part of compl't in the case of Ja's Bankhead vs. R. A. Bennett, Jo. G. Gifford, Jno. W. Head, et als.; which case is now pending and at issue in the said circuit court of the U. S., at Nashville, and not waiving any right to resist the claims that may be proven against the Gifford, in bankruptcy.

Quest. 1st, to Jno. W. Head by compl't. You will state what amount of money, if any, Gideon Gifford, the bankrupt, owes the def't, W. S. Alexander, at this time, and whether or not said Alexander holds any collateral security now for the payment of said debt, or has he at any time held such collateral security? If so, when did he surrender it?

Quest. 2, to same and by same. State upon what property or estate the said Alexander holds a lien, if any, for the payment of said debt; then state specifically and fully how he obtained the said lien, if any he has, upon what estate, property, or effects of said G. Gifford, or any one else. Then state when said debt was contracted, and what steps or action said Alexander has taken, if any, to enforce said liens, and what evidence has he, if any, of such a lien?

Quest. 3rd, to same and by same. State whether or not the debt of said Alexander, or any part of it, was paid before the making of the deed of trust in which his said debt is secured.

Quest. 4th, to same and by same. State how much said Gideon Gifford was indebted to you at the time he took the benefit of the bankrupt law, and whether or not it was a liquidated claim; then state how much he, or any one else for him, has paid you on said claim, and when; then state when said debt was contracted, and for what contracted; and then state what amount now remains due and unpaid of said debt, and all the particulars, &c.

Quest. 5th, to same and by same. State what amount now remains due and unpaid on the alleged debt or claim of W. Hart against said Gideon Gifford. If anything has been paid on it, state how it was paid; in what the payment was made; and, if made in the note or account of some other or third party, please state upon whom the note or acc't, or other evidence of debt, was, and the amount thereof, and if any interest

was due thereon. Give the total amount, including the note and interest, so transferred in payment to said Hart.

Quest. 6th, to same and by same. State what the amount of this said debt was, if anything, at the time of the bankruptcy of said G. Gifford, and for what consideration contracted, and when.

Quest. 7th, to same and by same. State the amount now due and owing upon the debt of said Gideon Gifford to the def't, R. A. Bennett, secured in said deed of trust. State the consideration thereof, and when contracted.

Quest. 8th, to same and by same. State whether or not you have any evidence of debt or account of the claim of yourself or of any of the other def'ts against said G. Gifford. If so, please make them
37 exhibits to your answer to these questions, as a part thereof; & if any of them are in judgments, please make a certified transcript of the record in the case as an exhibit to your answers.

Quest. 9th, to same and by same. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause; and, if yea, set forth the same fully and at large in your answers.

SHACKELFORD & HELMS,
Sol's for Bankhead.

Interrogatories for R. A. Bennett to answer:

Question 1st. State your age, residence, & occupation.

Quest. 2nd. State whether or not you are acquainted with the parties to this suit, and one Gideon Gifford; if yea, then state whether or not said Gideon Gifford was indebted to you in any sum at the time he took the benefit of the bankrupt law; if so, state the amount and the consideration thereof, and when contracted; then state whether or not he has paid you anything on said debt since he went into bankruptcy, or any one for him; if yea, state in what paid, the amount paid, when paid, and by whom paid; then state what amount still remains due and unpaid on said debt, if anything, at the present time, and make out an itemized account thereof, a part of your answer, as an exhibit thereto, and then state if it is all just due and unpaid, as shown in said exhibit, and if in a note or other evidence of debt, please exhibit it.

Quest. 3rd, to same and by same. State if this debt, if any, is the same as is secured in the deed of trust made to you by said G. Gifford, and registered in book M, page 433-'4, in the register's office, in Sumner County, Tennessee. If not, has it been contracted since? If so, when; and has the debt, so secured in said of trust, been paid, if ever owing; if not, how much remains due and owing? State specifically all about these matters.

Question 4th. State whether or not the said property, so conveyed in said deed of trust, was ever taken out of the possession of said G. Gifford. If yea, state what was taken out of his possession; then state whether or not any effort was made to close said deed of trust; then state, as near as you can, the value of the personalty conveyed in said deed of trust, and where it now is. If disposed of, state by whom.

Question 5th. State whether or not the debts spoken of in said deed of trust as due one Winslow Hart, John W. Head, have all been paid, or a part. If part, how much, when paid, and by whom, and how much is now due each one respectively? State fully all you know about this.

Question 6th. State all you can about the debts secured to W. S. Alexander, in a deed of trust made by said Gideon Gifford to John W. Head on the 18th day of February, 1867, and recorded in book M, page 499, in the register's office of Sumner County, Tennessee. State if any part or all of the said sum have been paid; if so, how much, and by whom paid, and when paid.

Question 7th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue
38 in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

SHACKELFORD & HELMS,
Sol'rs for Bankhead.

Interrogatories for J. J. Turner to answer:

Question 1st, to J. J. Turner by complainant. State your age occupation, and residence; then state if you know the parties to this suit, and if you are counsel for the def'ts Jo. G. Gifford and Gideon Gifford, John W. Head, R. A. Bennett, W. Hart, W. S. Alexander, and T. M. P. Hall, or any of them in this cause; if so, state what ones.

Question 2d. State what you may know in full about the debts secured in a deed of trust made by Gideon Gifford to John W. Head, recorded in book M, page 499, in the register's office in Sumner County, Tenn., to defendent, W. S. Alexander, of about the sum of $1,450. State if all, or any part of it, has been paid; if so, when, and by whom, and in what paid; then state about the debt secured in a deed of trust made to R. A. Bennett by said Gifford, registered in book M, pages 433 & 4, in the register's office of said Sumner County, securing W. Hart, John W. Head, and R. A. Bennett. State if these debts to all of these said parties have all been paid, or paid in part; if so, state which one and how much paid; by whom paid, when paid, and in what paid. State fully and specifically all you know about this.

Question *3th.* State, as nearly as you can, the value of the said Donoho tract of land spoken of in this cause, and for which Gideon Gifford agreed to pay $10,000; then state for what amount it rents for per annum, and how long it has been rented; by what authority reuted, and how much rents therefrom are now on hand, if anything, and who has the fund; then state the value of the mill, the mill-site, and lands attached thereto; who now has the control of the same, and who has had control of it since the said Gideon Gifford went into bankruptcy, and has it been rented since by any one; if so, by whom, and how long, and for what price per annum. Then state the value of the 150-acre tract of land and the 60-acre tract; the 18 or 20-acre tract; the 10-acre tract, and the 3-acre tract of land, as described in the aforesaid deed of trust, separately and apart one from another; then state if said Gideon Gifford had any interest in or debt against the Hartsville Turnpike Co., or any other one; if so, has the interest he had therein at the time he went into bankruptcy since been adjudicated and determined? If so, what amount was adjudicated or found due him, if any, and in what form, and where and when? Then state where that fund now is and in what it consists, and who has control of it.

Question 4th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this

your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

SHACKELFORD & HELMS,
Sol'rs for Bankhead.

39 JA'S BANKHEAD
vs.
JO. G. GIFFORD ET ALS.

In the U. S. circuit court for the middle district of Tennessee, at Nashville.

Pursuant to a commission directed to me by the honorable court of the U. S. for the middle district of Tennessee, at Nashville, I have on this, the 17th day of April, 1873, caused R. A. Bennet and J. J. Turner to appear before me, at my office in the town of Gallatin, in Sumner Co., Tenn., and proceeded to take their deposition, to be read as evidence on the part of compl't in the cause pending in said court, wherein Ja's Bankhead is compl't and Jo. G. Gifford et als. are def'ts; said commission is hereto attached and made a part of these depositions; said depositions are taken upon interrogatories which are also hereto attached.

The said witness, R. A. Bennett, being first duly sworn, deposes and says:

Ans. to 1st. I was 51 years of age last Jan'y. I reside at Gallatin, Sumner Co., Tenn., and am a lawyer by profession.

Ans. to 2nd. I think I am acquainted with all the parties to this suit, and am very well acquainted with one Gideon Gifford. Said Gideon Gifford was indebted to me at the time he went into bankruptcy by one note dated the 1st day of Jan'y, 1854, due twelve months after date, for $29, with a credit on the same of $8, dated March 13th, 1859; also by note dated Sept. 7th, 1865, due 12 months after date, for $150. He is likewise indebted in the sum of at least $150 for professional services rendered him, and which has not been closed by note. The consideration of the $29 note above mentioned was the difference in a horse-trade between said Gifford and myself. The consideration of the $150 note was for professional services rendered him in the chancery court at Gallatin. Said Gifford has never paid me one dollar on his indebtedness to me since he went into bankruptcy, nor has any person for him. I cannot now make an accurate itemized account of his indebtedness to me on account of the burning of a portion of my books and papers when my house was destroyed, but file one to the best of my recollection as Exhibit A to this answer.

Ans. to 4th. The property mentioned in the deed of trust was never taken out of the possession of said Gideon Gifford by myself. I do not think that I ever gave bond or qualified as trustee of said Gifford. Some of said Gifford's creditors came to me and wanted the said deed of trust closed up, or that it ought to be done, and the same has never been closed. I never saw the personal property conveyed in the deed of trust, and therefore cannot estimate the value of the same. Gifford's live-stock was generally very indifferent and poorly kept. I do not know where the personal property now is, but suppose it is in the possession of the said Gifford.

Ans. to 5th. I am the att'y of Winslow Hart. His claim is in a judgment in the circuit court of Sumner Co., and before the lien of the judgment expires the same was levied upon a portion of the land con-

veyed in the deed of trust to me, and not a dollar of said debt has been paid to me, and if any of the said debt was paid to any other person I do not know it. Only $650 of Hart's debts against Gideon Gifford was in a judgment. This debt was due from E. P. G. Gifford and Gideon Gifford, and E. P. G. Gifford's estate being insolvent it was wound up in the chancery court of Smith Co., and Winslow Hart received his pro rata on said claim, amounting to about $150, as well as I can now recollect. If anything has ever been paid to Jno. W. Head on his debt, I do not know it.

Ans. to 6th. In regard to the debt of W. S. Alexander I know nothing.

Ans. to 7th. From my acquaintance with the parties and the knowledge of Gideon Gifford and the creditors mentioned in the deed of trust, I have not a doubt that said Gifford owed all the said debts at the execution of the deeds of trust, and very few, if any of them, have been paid since, but that they are bona fide, subsisting owing by said Gifford, and I know no fact or circumstances on the part of Gifford, or the creditors of said Gifford, evidencing to me any fraud whatever by either party. I have known M'r Gifford for twenty-five years, and during the major part of this acquaintance he has been regarded as solvent, but always largely in debt, and very bad and slow pay. If these facts throw any light on the subject-matter, I freely give them.

And further this deponent saith not.

R. A. BENNETT.

Deposition of James J. Turner.

The said witness, James J. Turner, being duly sworn, deposes and says:

Answer to interrogatory 1st. I am 42 years of age; reside near Gallatin, and am an attorney at law and farmer by occupation. I am acquainted with all the parties to this suit. I am the solicitor of T. M. P. Hall alone, but not of the other parties named.

Answer to 2. J. W. Head and myself were partners from 1854 until 1862, and as such we attended to a number of cases for Gideon Gifford in the counties of Sumner, Smith, and Macon. Since 1855 J. W. Head has attended to a number of cases for him in the counties of Sumner and Smith. The amount of $500 stated in the trust deed is very low for the services performed. I know nothing at all about the debt stated to be due W. S. Alexander, nor do I know anything about the debt going to W. Hart. I know that R. A. Bennett was his attorney in several cases, but I do not know the amount due him. If Gifford has paid any portion of these debts, I do not know it. Gifford's reputation for paying debts was very bad, though fruitful in promises.

Answer 3rd. The Donoho tract of land is worth, upon the usual terms of sale, from $6,000 to $7,000. Said tract rented for $165.00 in 1870, $200 in 1869, $240 for 1872, and for $595 for 1873. The amount of the rent for 1871 has not yet been ascertained. It has been rented by J. R. Barry, C. & M., under decree of the chancery court of Sumner County, in the case of James R. De Dow, executor of G. Donoho, deceased, vs. Gideon Gifford et als. No portion of the rents has been collected, but I consider them as well secured. I should think that the mill, mill-site, and land is worth at least $1,000. W. H. Gifford has been in possession and control of said mill since his father, Gideon Gifford, went into bankruptcy. It has not been rented by any one that I know of. The 150-acre tract of land is worth between 3 and $4,000. I do not know the

value of the 60-acre tract, but it is situated in the same locality as the other lands. Gifford has no title at all to the 18 or 20 acre tract of land, the same having been sold under decree of the chancery court of Sumner Coun'y, and the same not having redeemed, it belongs now to A. G. Brannon. The 10-acre tract is worth between 3 and $400. It was likewise sold to pay a debt going to A. G. Brannon by virtue of a levy made before the execution of the trust deed. I know nothing about the 3-acre tract of land. Gideon Gifford did have a debt against the Carthage and Hartsville Turnpike Co. I cannot state the exact amount that Gideon Gifford's estate will be entitled to out of said fund, because cost, attorneys' fees, and some other matters are to be settled, but I think it will amount to about $2,750, provided that Jo. G. Gifford does not get it under the conveyance from his father, Gideon Gifford, to him.

Answer 4th. I have been attorney for James Bankhead in the
41 Sumner circuit court, and he has had pending suits against Gideon Gifford from 1860 up to this time, which involved the amount due, or said to be due, from Gifford to said Bankhead. I also know Gideon Gifford has been in possession of said Donoho's lands from about 1859 up to the present time, and held and claimed the same as his own until 1865, when the land had become greatly depreciated in and around Hartsville, and Ja's R. De Bow was pressing Gifford for the payment of the balance of the purchase-money. Gifford then claimed that the sale of the land to him was a verbal one, and the cases have been pending in the circuit and chancery courts of Sumner and Trousdale Counties up to this time. I have been the sol. of Ja's R. De Bow and the Donoho heirs in said litigation, and I know that said Donoho has been pressing the enforcement of the lien of the Donoho tract of land, and the heirs have been ready and willing to make a title to said tract of land upon the payment of the purchase money. The bill now pending in the chancery court at Gallatin was filed by myself, at the instance of Ja's R. De Bow, for the purpose of renting out the Donoho lands during the pendency of the litigation to enforce the vendor's lien. Ja's R. De Bow did not prove the amount of the vendor's lien in the bankrupt court, for the reason that he had a suit pending in the Sumner circuit court to enforce the same, and it was revived against N. W. McConnell, assignee of said Gideon Gifford. He was, under legal advice, fearful of losing his vendor's claim if he proved the same in the bankrupt court, and abandoned his suit. And further the deponent saith not. The debt of T. M. P. Hall has been paid.

JA'S J. TURNER.

STATE OF TENNESSEE, *Sumner Co.:*

I, J. R. Barry, clerk and master of the Sumner chancery court and special commissioner, do hereby certify that the foregoing deposition of R. A. Bennett and Ja's J. Turner were taken before me, at my office in Gallatin, on this the 17th day of Ap'l, 1873, as set forth in the caption, and that the same was reduced to writing by Geo. W. Graham in my presence, and that the same has not been altered or changed since the same was signed by the witnesses, and that I sealed the same up and directed them to E. R. Campbell, cl'k and m., Nashville, Tenn., and deposited them in the post-office at Gallatin, without ever being out of my possession.

I further certify that I am neither kin, counsel, nor agent for either of the parties to this suit, nor interested in the termination of the same.

In testimony whereof I have hereunto set my hand and affixed the

seal of said chancery court, at Gallatin Co. and State aforesaid, on this 17th day of Ap'l, 1873, and in the 97th year of American Independence.

J. R. BARRY,
C. and M. and Special Com.

42 JA'S BANKHEAD
vs.
JO. G. GIFFORD ET ALS.,

AND

JA'S BANKHEAD
vs.
J. R. DE BOW ET ALS.

In the circuit court of the U. S., at Nashville.—Equity.

Interrogatories to be answered by the several witnesses named, and the depositions are taken to be read in both suits.

Int'r's to be answered by John W. Head, Gallatin, Tennessee:

Int. 1st. State your name, age, occupation, and residence.

Int. 2d. State whether Gid. Gifford was indebted to you at the time he executed a deed of trust to R. A. Bennett, as trustee; the amount of said indebtedness; whether any part of the same has been paid; and, if so, by whom, and when. File as a part of your answer your accounts, notes, and other evidences of indebtedness.

Int. 3rd. State all you may know about an execution of a deed of trust to you, as trustee of Gid. Gifford, to secure a debt due W. S. Alexander. State the debt, when due, &c.

Cross-interrogatories to be answered by Jno. W. Head, propounded by J. J. Turner, sol'r for Jos. R. De Bow et als.:

Cross-int. 1st. Did R. A. Bennett or any one else ever qualify as trustee of trust-deed made by Gideon Gifford to R. A. Bennett June 18th, 1866; if so, when, and where?

2nd. Did any of the beneficiaries under said deed of trust ever attempt to get any one to qualify as trustee and execute said trust-deed; if so, who, and when, and what did they do?

3rd. Did any beneficiary under said trust ever attempt in any way to have the same executed; if so, who, and what did he do?

4th. State if Gid. Gifford has not been permitted by the trustee and beneficiaries under said trust-deed to remain in the quiet possession of all the property therein conveyed, and use and sell much of the same; and has it not mostly disappeared, especially the stock; and has a dollar of said property been appropriated in any way from 1866 till now to pay or secure the debts of Gifford? If you answer yea, give all the facts of the same as to names, dates, amounts, and all about it.

5th. How much of the property is now on hand, and has not that remaining become greatly depreciated in its character and value since June, 1866?

6th. Did you ever attempt to carry out or execute that trust-deed or assignment made to you? If so, state all of the particulars as to what you have done as to the same. Has anything been sold or rented out by you, or have you taken any steps at all as trustee? If you say yea, state the same fully and particularly.

7th. Is not Gid. Gifford a very litigous man, and one who has had a great many law-suits and difficulties?

Cross-interrogatories propounded by Shackelford and Helms, sol's for compl't, to Jno. W. Head:

Cross-int. 1st by Shackelford & Helms. When you file your account make it an itemized account, and show the date of each charge, and for what services it was made, and the character of the services rendered; in what capacity, and when; then state the amount of credits to which Gideon Gifford is entitled on said account, when paid, in what paid.

2nd. Has not the said Gideon Gifford consulted you frequently in regard to these said suits both before and since the death of the said Jo. G. Gifford? If so, when did he last consult you in regard to it; and did he not give you the points to ask a majority of the witnesses here interrogated in these int's; if not a majority, then in some of them, and which ones?

43 Cross-int. 3rd. Did he not go to K'y and elsewhere to hunt up and to talk to some of these witnesses herein interrogated before these inter's were filed, and at whose instance did he go? And when he returned did he not report the result of his trip & investigation to you or your firm, either in person or otherwise? And give minutely all the facts in regard to this.

4th. Has not said Gideon Gifford employed you to defend these suits or one of them, and promised to pay you for your services therein? If so, when, and give all the particulars in regard to the same.

Interrogatories to be answered by Rob't Hallam:

Int. 1st. State your name, age, residence, and occupation; also state what your occupation was in June, 1867, or what office you held at that time.

2nd. State whether or not you were present in June, 1867, and saw any money paid by Jo. G. Gifford to Gideon Gifford; if so, state the amount paid, the reason it was paid. State all you know in regard to these matters.

Cross-interrogatories to be answered by Ro' Hallum, propounded by J. J. Turner, sol'r for def'ts:

Cross-int. 1st. If you saw any money passed between Gid. Gifford and Jo. G. Gifford in 1867, by reason of a sale to said Jo. G. Gifford, state the amount that passed between them, who wrote the instrument, and who were present when the trade was made and when the money was paid.

2nd. Where did it occur at and at what time of day was it?

3rd. How long did Jo. G. Gifford stay in Gallatin, and had he been to Hartsville at all during that trip here?

4th. Was the wife of Gideon Gifford present at said trade, or when the money was paid or counted, and what became of the money? and did not Jo. G. Gifford take the money back to Murfreesboro?

5th. Was any power of att'y given by Jo. G. Gifford to Gideon Gifford to manage or control said property? And state all you have heard said and saw done upon that occasion; state the same fully.

J. J. TURNER,
Sol'r for DeBow.

STATE OF TENNESSEE,
Sumner Co.:

JA'S BANKHEAD
vs.
JO. G. GIFFORD ET AL.

and

JA'S BANKHEAD
vs.
J. R. DEBOW ET ALS.

In the above causes pending in the circuit court of the U. S. at Nashville, equity, the answers of Jno. W. Head and Rob't Hallum to int's forwarded me, were reduced to writing by me at my office in Gallatin County and State aforesaid, on this the 21st day of Jan'y, 1874, said witnesses alone being present; said int's are hereto attached.

JNO. W. HEAD, being duly sworn, in answer to interrogatories propounded to him, deposes and says as follows:

Ans. 1st. My name is Jno. W. Head. I am 51 years old; and reside near Gallatin, Tennessee. I am by profession a lawyer.

2nd. Gideon Gifford was indebted to me at the time he executed a deed of trust to R. A. Bennett in 1866. The amount of said indebtedness is shown by the account herewith filed as a part of this answer, and marked Exhibit A. I cannot state accurately what part of said indebtedness has been paid. Gideon Gifford delivered to me 12,900 feet of plank for which he charged me $2.00 per hundred, making $258.00. I advanced him $86 in cash on this and the balance was to go as a credit on his indebtedness to me. I think this plank was delivered in 1867. In 1868 M'r Gifford delivered me a lot of saw-logs, sills, plates, &c., at three hundred dollars. I advanced him $40 on this lot; deducting cash advanced on the lumber left $432, which was to be applied to 44 what he owed me. But I did business for him after the execution of the deed of trust, and the amount due for the lumber was to go as a payment on what he owed me not secured by the trust-deed, and the balance, if any, to go as a credit on the amount for which the deed provided. Said account filed, Exhibit A, shows as accurately as I can state it the account between M'r Gifford and myself. I herewith file a note I hold on M'r Gifford for $150 marked Exhibit B, and make the same a part of this answer. I wrote the deed of trust executed by Gideon Gifford to W. S. Alexander in which I was named as trustee. Alexander obtained a judgment in the circuit court of Smith Co. against said Gideon Gifford, the date and amount of which I do not remember. While at Carthage attending court the parties called upon me to write the said deed, which I did. The transaction was fair—bona fide.

Ans. to cross-int'r's of J. J. Turner:

Ans. 1st. I have no personal knowledge as to whether R. A. Bennett or any one else ever qualified as trustee under the deed of trust made by Gideon Gifford to said Bennett.

Ans. 2nd. I do not know whether any of the beneficiaries under said deed of trust ever attempted to get any one to qualify as trustee and execute said deed of trust. I made no such effort myself because before the time arrived to close said deed of trust, to wit, on the 10th day of June, 1867, Gideon Gifford sold the property to Jo. G. Gifford subject to said deed of trust; and it was understood that the debts would be paid.

Ans. 3rd. This question is answered in the two preceding answers.

Ans. 4th. I do not know whether the trustee permitted Gideon Gifford to remain in the possession of the property conveyed, but suppose he did. I know nothing of any sales made by Gideon Gifford of the property nor what has become of the personal property conveyed; nor do I know whether the property depreciated in value, except the lands. There has been a general depression in the price of lands. I cannot state whether any of the property conveyed in said deed of trust was appropriated to any of the trust debts. All I can state is this: after the execution of said deed of trust the wife of M'r Gifford was urging him to make some arrangement about some money that she claimed to have been furnished him to pay for the Donoho tract of land. In order to secure her Gideon Gifford made a sale to Jo. G. Gifford and executed to him a conveyance, and the original is here filed, marked Exhibit C, and made a part of this answer. At the time of said trade it was agreed that Jos. G. Gifford would pay off the debts and I felt satisfied. At that time I was needing some lumber and Gideon Gifford agreed to furnish me the lumber and let it go after paying me what he owed outside of the trust as a credit on the debt secured in the trust. It was my understanding at the same time from the parties that Gideon Gifford was to manage the property for his son who lived at Murfreesboro, and was to be repaid by his son any debts he might pay that were secured in either deed of trust.

Ans. 5th. My answer to the 4th int. answers this.

6th. I never attempted to carry out or execute the deed of trust made for the benefit of Alexander, nor have I ever rented out the land or sold under it. I have never accepted or qualified as trustee, nor taken any steps under said deed of trust. At the making of said deed there was a controversy between the parties of either existing or prospective
45 litigation, and I advised M'r Alexander to let the matter rest until the controversy was settled between DeBow and Gifford, as the character of that controversy greatly affected the value of the property. Gifford claimed that was no writing between him and DeBow, and DeBow claimed there was, as I understood.

Ans. 7th. I do not regard M'r Gifford as a litigious man, though he has had a great many lawsuits. Prior to the war he was engaged in different kinds of business. He was rather loose in his business transactions and as a consequence since the war he has had a number of suits.

Ans. to cross-interrogatories of Shackelford & Helms:

Ans. 1st. My answer to the second original question and the account filed, Exhibit A, is due answer to this question.

Ans. 2nd. Gideon Gifford has consulted me frequently in regard to these suits, both before and since the death of Jo. G. Gifford. The last time he and I had any talk about the cases was last Saturday, the 17th ult. He has also given me information in regard to what many, if not a majority, of the witnesses would prove, as will be more fully explained in answer to the third int'y.

Ans. 3rd. I cannot state of my own knowledge whether M'r Gifford went to K'y or elsewhere to hunt up and talk with witnesses. I have understood from him that he did see and talk with a number of witnesses whose depositions have been taken, and he has reported to me what he thought they would prove. He spoke of the testimony of Benj. Rush after his deposition was taken, and said that Rush had stated that DeBow had been trying to get him to swear that he, Rush, heard Gifford admit that DeBow had given him a title bond for the land, or some-

thing to that effect. After Rush's deposition was taken M'r Gifford seemed greatly surprised and told me the names of persons who heard the conversation. I am asked to give minutely all the facts, and to do this will have to go back prior to the suits. Before the sale of Gideon to Jo. G. Gifford the wife of Gideon Gifford consulted me in the regard to the securing of her interest in the Donoho tract of land. She stated to me that the money she received from her father's estate was paid by her husband on the Donoho tract of land, upon an agreement between herself and husband that she was to have an interest in the land to the extent of her fund, and that when paid for the title was to be made to her in that proportion. That upon this agreement she let her husband have the money; that she supposed that it was all fixed right until a short time before I saw her; that she had understood there was a controversy between M'r Gifford and DeBow about the land, and she was uneasy about her means, or her interest in the land, and she wished to know what steps to take. I do not remember whether M'r Gifford was present when this conversation took place. If he was not, he was called in and concurred in the statement of his wife, the matter being talked over in his presence.

I then advised M'r's Gifford that it would be best for her if possible to get her money back with interest and not be involved in the litigation about the land. This she said she preferred, but M'r Gifford said that he could not raise the money unless he could effect a sale of the interest he had in the Donoho tract of land and in the property conveyed to Bennett as trustee. I advised the effort be made, but in the event it was not arranged in this way I told M'r's Gifford that I would file a bill for her and make an effort to set up her rights and equities in the land. Some time after this I was called upon by Gideon Gif-
46 ford and Jo. G. Gifford to prepare the transfer or convey', and marked "Exhibit C" in my deposition. My impression is that something was said about counting the money, and that I was very busy, and requested them to get some other person to attend to it. After these suits were brought Gideon Gifford and Jo. G. Gifford both came and employed me to defend them. Gideon Gifford employed me on behalf of his wife, and Jos. Gifford for himself. Gideon Gifford has promised to see my fee paid. At the time I was employed it was agreed between the parties that Gideon Gifford should attend to the suits as the agent of his wife and son; and since that time he has been principally attending to getting up the papers and getting up the proof. M'r Gifford has been active in the defence of the suits. He was acquainted with all the facts, and I think it was upon my suggestion that Gideon Gifford agreed to assist me in the case.

Ans. 4th. My answer to the 3rd int. I adopt as my answer to this.

M'r Gifford has not given me his note for the fee, but has agreed to be bound for the same; and further this deponent saith not.

J. W. HEAD.

ROB'T HALLUM, being next duly sworn, answers to interrogatories, deposes, and says as follows:

Ans. 1st. My name is Rob't Hallum. I am about 75 years old; and reside near Gallatin, Tennessee. I was county reg'r in 1867.

Ans. 2nd. I was present in June, 1867, and saw Jo. G. Gifford pay Gideon Gifford $4,000. I counted the money. It was paid in consideration of the deed marked Exhibit C, J. W. Head's deposition, dated 10th June, 1867, and recorded in record book No. 26, page 103.

Answers to cross-interrogatories propounded by J. J. Turner:

Ans. 1st. I saw Jos. Gifford pay Gideon Gifford $4,000, which I counted. There were other persons in the office, but I do not remember their names. The deed is in the handwriting of John W. Head, and I suppose he wrote it. The money was paid on the day of the date of my certificate, to wit, the 10th of June, 1867.

Ans. 2nd. It occurred in my office in Gallatin at about 3 o'cl'k p. m., 10th June, 1867.

Ans. 3rd. I do not know how long Jo. G. Gifford stayed in Gallatin, nor whether he went to Hartsville during that trip.

Ans. 4th. The wife of Gideon Gifford was not present when the said money was paid. The money was paid over to Gideon Gifford, and I know nothing more about it.

Ans. 5th. I have no recollection of any power of att'y being given by Jo. Gifford to Gideon Gifford, nor did I hear of any; and further deponent saith not.

ROB'T HALLUM.

I, W'm Clark, do certify that the foregoing deposition of Jno. W. Head and Rob't Hallum were taken by me on the day, at the place, and in the presence of the parties mentioned in the caption. That I am not agent or att'y of either of parties, nor related to either, and in nowise interested in the suits. Said were reduced to writing by me in the presence of said witnesses, and the same have not been out of my possession or in any wise altered or changed since taken, and I sealed the same up and delivered them to John W. Head to be filed with the clerk.

Jan'y 21st, 1874.

WILLIAM CLARK.

47 JAS. BANKHEAD *vs.* JO. G. GIFFORD ET ALS.

and

JAS. BANKHEAD *vs.* JAS. R. BEBOW ET ALS.

In the circuit court of the U. S., at Nashville. Equity.

Interrogatories to be answered by several witnesses named, and the depositions are taken to be read in both suits.

Int'r's to be answered by Winslow Hart, of Hartsville, Tennessee:

Int. 1st. State whether or not you are acquainted with Gideon Gifford, and if so, whether you had a debt against him secured by a deed of trust, executed in 1867, to R. A. Bennett, as trustee?

2nd. State the amount of said debt when due, and whether any part of the same has been paid.

3rd. State, if any part has been paid, when the same was paid, the amount paid, and by whom the same was paid.

4th. State any other fact or facts that you may know, that will be of benefit to either party.

Cross-interrogatories for Winslow Hart, propounded by J. J. Turner, solicitor for defendants:

Cross-int. 1st. Have you ever taken any steps of any kind to have the trust deed of G. Gifford to R. A. Bennett, trustee, executed and carried out? If yea, state what you have done to carry out the same.

2nd. Has any one ever qualified under said deed as trustee, or taken charge of the property conveyed, or sold any of it, or rented it out at all, or served in any way, and has not G. Gifford remained in possession of the same 1866 to 1874?

3rd. Has one single article of the property conveyed been sold or appropriated in any way to pay Gideon Gifford's debts? If so, state all about it.

4th. Is not Gid. Gifford a man who has a great many lawsuits and difficulties? Is not this his general character and reputation?

5th. Has not the real and personal estate of Gideon Gifford greatly depreciated in value since 1866?

Cross-interrogatories propounded to Winslow Hart, by Shackelford and Helms, sol's for complainant:

Cross-int. 1st. If you say you had a debt against the said Gideon Gifford, please file as an exhibit to your deposition the evidence of such, whether it be an open account, note, check, or bond, or whatever it may be, and give the date the same became due and owing to you, and then state fully the amount that has been paid you on said indebtedness up to this time, by whom paid, and when.

2nd. Have you not taken Gideon Gifford's obligation, note, due-bill, or other evidence of debt, for the said claim of yours since he has been discharged in bankruptcy, if not for all, then for a part, and give all the facts in regard to this matter.

Int'r'g's to be propounded to M'r's Prudence Gifford, Hartsville, Tennessee:

Int. 1st. State whether or not you are acquainted with Benj. Rush, whose deposition has been taken in this cause.

2d. State where he lived when you first knew him, and whether he at any time came to your house.

3rd. State whether or not in the fall of 1868, Benj. Rush had a conversation with your husband, Gideon Gifford, at your house, in which he said anything about Ja's R. DeBow's wishing him to swear that he had heard your husband say that he, DeBow, made him a title-bond. If you heard him, Rush, say anything on this subject, you will please state who commenced the conversation, and all that he said on the subject. State the facts.

4th. State whether your deposition has been once taken, and if so whether you are willing to, and do adopt the same, as your dep's
48 in both cases.

5th. State whether or not there was any contract or agreement between yourself and husband, at the time you say you consented that he should invest your funds in the Donoho tract of land, as to vesting the title to the land, or any part thereof, in you. If any agreement was made, state what the agreement was. State the facts.

6th. State whether or not you were willing, or refused, to let your funds be invested in said lands unless the title to the extent of your funds was invested in you.

7th. State whether or not you became uneasy about your funds, and the title to the land; why the title was not made to you; whether you

consented to the sale to Jo. G. Gifford, and why you consented to sale, and whether or not the sale was made to secure your funds.

8th. State whether or not your husband had any intention, at the time he made the conveyance to Jo. G. Gifford, of taking the benefit of the bankrupt law. Did you ever hear him speak of it until about the time he made his application to be discharged?

9th. State anything else within your knowledge that may be of *or* advantage or benefit to either party, and that is pertinent to the issues involved in these suits.

Cross interrogatories propounded by J. J. Turner, sol. for some of the def'ts, to M'r's Gifford.

Cross-int. 1st. Where was the trade between Gideon Gifford and Jo. G. Gifford made, and were you present? Did you ever see or handle any of the money in said transaction? Who brought you the note of J. G. Gifford, and what is the date and amount of the same, and who wrote it?

2nd. Did Jo. G. Gifford ever go into possession of any of the property sold to him? If so, when, and did he control and manage it all?

3rd. How long before the sale to Jo. G. Gifford by your husband was it that you had seen Jo. G. Gifford?

4th. Who introduced the conversation with Rush? State all that was said, who were present, how long did the conversation last, what month was it in, and the day of the week, and the time of day that it occurred.

5th. When did your husband last converse with you as to this statement of Rush, and how often has he talked to you about it, and who were present at such conversations?

6th. Did you know, when your husband left home to make the trade with Jo. G. Gifford, how the same was to be made, and did you or not authorize him to make the trade and take a note instead of the money? State all you know of such trade before the note was brought.

7th. Why did your husband have the title to the Donoho tract of land taken to himself entirely, instead of to him and to you jointly, if your means paid any part of the purchase money?

Cross-interrogatories propounded by Shackelford and Helms, sol's for comp's, to be answered by M'r's Prudence Gifford, Hartsville, Tenn.

Cross-int. 1st. Are you not the wife of Gideon Gifford, and the mother of Jo. G. Gifford, now dead?

2nd. If you made any agreement with your husband in regard to making a payment on the said Donoho tract of land with your money, state how long it was after he had made the purchase of said tract. Were you living on the said tract at the time the payment
49 was made with your husband? State fully how this is.

3rd. Did you take any writing from your husband showing any such agreement? If so, file it as a part of your deposition; or if it was nearly all oral agreement, then state the month and the year; then why it is that you can't give dates in this matter when you have heretofore had such a clear recollection of matters connected with this lawsuit? Explain all this fully.

4th. How long did you have your money before you gave it to your husband to make a payment on this land, and what did you do with your money between the time you first received it and the time your husband paid it on said land, and who had the possession of your said money at the time you said you agreed for your husband to pay it on said land? Now are not the facts these, and was not all the money you

had ever received from your father's estate in the hands of your husband as received by him from the estate, though the executor or administrator paid on this land after he had made the purchase of the same, and found he could not pay for it himself; and did he not after this promise you that you should have an interest in this said land to the extent he had used your money in the purchase of them? If this was not the way the transaction occurred, then explain fully how it did take place, and all about it, and who were present. State them all.

5th. Did you receive the money coming to you from your father's estate in person, or did your husband receive it, and who gave the executor or administrator a receipt therefor, you or your husband; and how many times did you receive money from your father's estate, and in what amount each time; and how far apart were these different receipts; and what year did you receive the first payment, and what year did you receive the last payment; and how much did you receive in all from your father's estate in money; and did you never spend any of it for other things than these lands; if so, how much did you spend?

7th. Does your husband give these suits any attention in the way of hunting up the witnesses, employing and consulting lawyers? If so, what att'ys has he employed to attend to them? State all the facts about this matter.

8th. If you have any receipt, note, or other evidence of the money you say you let your son, Jo. G. Gifford, have, that is signed by him, please file the same as an exhibit to this your deposition; that is, the money you say he paid your husband for all of said land, &c., to wit, some $4,000.

9th. Have you ever filed your claim against the estate of your son, Jo. G. Gifford, for the money you claim to have loaned him? Have you not? Do you ever intend to do so? Answer this question positively, one way or the other.

10th. If you say your husband had no intention of taking the benefit of the bankrupt law, then please state how you know what his intentions were. And can you, and do you now state that you knew what his intentions were when he sold out all he had to his son, Jo. G. Gifford, or pretended to do so?

49½ Interrogatories to be answered by W. S. Alexander, Hartsville, Tenn.

Int. 1st. State your age, residence, and occupation.

2nd. State whether or not you have a debt against Gideon Gifford. State the amount and the date of the same. State all the facts in regard to it.

3rd. State whether you have any security for said debt by way of a deed of trust or otherwise; who wrote the deed; what property it includes, &c.

4th. State whether any part of said debt has been paid to you; if so, by whom, and when paid, and the amount paid.

5th. State whether your claim is in a judgment; if so, procure and file as a part of your deposition a certified copy of the record of the court rendering said judgment.

6th. State anything else you may know that may be of advantage to either party, pertinent to the issue.

Cross-interrogatories to be answered by W. S. Alexander, propounded by J. J. Turner, sol. for def'ts:

Cross-int. 1st. Has the trustee under the said deed of trust ever qualified and given bond, or taken any steps to wind up said trust-deed, or

taken charge of the stock therein conveyed? If you state yea, give all the facts.

2nd. State what you or any one else has done to wind up or secure the property conveyed since 1866 to this time? Give all the facts.

3rd. State all you have done to wind up the said trust-deed.

Cross-interrogatories propounded to W. S. Alexander, by Shackelford & Helms.

Cross-int. 1st. Have you not taken Gideon Gifford's obligation, note, due-bill, or some other evidence of debt, for this said debt you claim against him, since he has been discharged in bankruptcy; if not for all, then for a part? and give all the facts in regard to this matter.

Cross-int. 2nd. What efforts have you ever made to collect the debt you now claim against Gideon Gifford? State all the facts in regard to the matter.

Interrogatories to be answered by John Chambers, Hartsville, Tenn.

Int. 1st. State whether or not you are acquainted with the mill and mill-site of Gideon Gifford, on Peyton's Creek, in Smith Co.

2nd. State what you think said mill and mill site were worth in 1867.

3rd. State how far you live from said mill, and how long you have lived near it.

4th. State any other matter or thing that may be of advantage to either party, pertinent to this issue.

Cross-interrogatories propounded to John Chalmers, by J. J. Turner, solicitor for the def'ts.

Cross-interrogatory 1st. Who has used and controlled said mill since 1866?

2nd. What has it been worth per annum?

Cross-interrogatories to be propounded to John Chalmers, by Shackelford and Helms, sol's for compl't.

Cross-int. 1st. Are you a practical millwright? Did you ever build a mill like the one in question? If so, where, and when; for whom?

2nd. Do you know what said mill cost? If you do, state what it did cost? What did the mill-site cost? If you don not know what it all cost, upon what principle can you state what it was worth in 1867?

3rd. Did you ever sell such a mill as the one in question? if so, when, where, and to whom? State all the facts fully in regard to the same.

4th. Who has been running, operating and controlling the said mills since 1867, to the present time, each year? Answer this question fully and minutely.

5th. How often did you see Gideon Gifford about said mills during a week or month on an average; and does he not claim these mills or a part of them? State your knowledge on this subject fully.

6th. What does said Gideon Gifford follow as a business; in other words, what does he do for a living?

Interrogatories to be answered by William Harper, Hartsville, Tenn.:

1st int. State your age, residence, and occupation.

2nd. State whether or not you are acquainted with Benj. Rush, and where he lived when you knew him, and where he now lives.

3rd. State whether or not you heard him have a conversation with Gideon Gifford at the house of said Gifford, in the fall of 1868, concerning J. R. DeBow—wishing him to swear that he heard Gifford say that DeBow had made him a title bond for the Donoho tract of land. If you

heard such a conversation, go on and state what said Rush said. State all the facts.

4th. State anything else within your knowledge that is pertinent to the issues involved.

Cross-int. to be propounded to W'm Harper by J. J. Turner, sol. for defendant:

Cross-int. 1st. Who all were present at said conversation, and what year and the month of the year was it, and was it a cloudy or a clear day, and what time of day did it occur?

2nd. Where did you live then, and where did Rush live, and who commenced the conversation? And state all that was said in it, and who participated in it, and the occasion of the same. Give all the facts.

3rd. Do you remember the conversation distinctly, and do now attempt to give the words of the same, or substance of the same?

Interrogatories to be answered by Gideon Gifford, Hartsville, Tenn.:

State whether you are acquainted with Benj. Rush, whose deposition has been taken? If so, state how long you have known him, where he lived when you knew him, and where he now lives.

2nd. State whether he had any conversation with you relative to J. R. DeBow wishing him to swear about a title bond having been made to you for the Donoho tract of land. If so, who introduced the conversation; when and where it was; who were present, and all that was said?

3rd. You have heretofore stated some facts relative to the investment of the means of your wife, derived from her father's estate in the Donoho tract of land. In reference to this, you will state whether or not there was any agreement between your wife and self relative to investing said fund, and what the agreement was; whether or not your wife refused or was willing for you to invest the fund in said land unless an interest in the land was secured to her equal to the amount of funds of hers thus invested.

4th. State why it was you did not convey or secure to your wife
51 an interest in said tract of land equal to the fund of hers thus invested in the same in pursuance of said agreement. State the facts.

5th. State why it was you made a sale of your rights and equities in the Donoho tract of land and the property included in the deed of trust to R. A. Bennett to your son, Jo. G. Gifford. State all the facts.

6th. State whether J. R. DeBow ever gave you a title bond between the 15th and 20th of Sept., 1859, at his house or at any other time or place, for the Donoho tract of land, or did he give you any memorandum in writing in regard to the sale of said lands?

7th. State whether or not you had any conversation with Benj. Rush or he with you, in Sept., 1859, at your mill, or at any other time or place, in which you stated to him that you had a title bond from Jas. R. De Bow for the Donoho tract of land, or any conversation in substance to that effect.

8th. State whether or not you endeavored to get more than the $4,000 from Jo. G. Gifford as the consideration for the conveyance made to him in 1867. State what amount you asked him for the property.

9th. State if you were anxious to make the trade or sale, and if so, why you were desirous to effect the sale. State all the facts.

10th. State whether or not anything was exacted of you in regard to the settling of the business by Jo. G. Gifford; whether or not he gave you a power of att'y to wind it up; whether or not you proceeded

under that power of att'y to discharge any of the debts included in the deed of trust executed by you to R. A. Bennett. State all the facts.

11th. State whether your deposition has been taken in one of these cases, and whether you now adopt it as your deposition in both cases.

12th. State any other facts that may be of advantage to either party.

State why the bill you filed in the chancery court at Gallatin against DeBow in regard to the Donoho tract of land was dismissed.

Cross-interrogatories to be answered by Gideon Gifford, propounded by J. J. Turner, sol. for def'ts:

Cross-int. 1st. Did you not threaten said Rush with personal violence if he gave his testimony in this case, and did you not at one time threaten him as to said matter, and when and where did you see Rush the last time and the time before that?

2nd. If you say yea as to the second interrogatory in original examination, state the date of the same, the time of year and day of week, and time of day.

3rd. When and where and from whom did you receive any means that belonged to your wife? Give the amounts, dates, and names, carefully and particularly; if you received and paid it out, state when, and where, and to whom, and on what accounts you paid out the same.

4th. If you received money for your wife as claimed, and made the contract as claimed, what part of the land was she to have, and why did you violate this agreement, and make conveyance of all your estate both real and personal?

5th. Did you not know that in 1859 a deed of trust was necessary to convey real estate? Were you not accustomed to trade in lands? If you say no bond or writing was signed by DeBow and delivered to you, why did you enter into so important a trade and make
52 large payments on the same, if the same vested alone in parol? When, and where, and to whom did you first raise the question of this being a parol sale, and has not the land greatly depreciated in value since then?

6th. Did you attempt to sell this interest to any one except Jo. G. Gifford? If so, state who else, and where did Jo. G. Gifford live then; and how far from this land, and what was his business at that time.

7th. If any power of att'y was executed to you by Jo. G. Gifford, you will file the same with your answer to this question.

8th. When had Jo. G. Gifford been to your house at Hartsville, before the sale?

9th. When was the trade between you and Jo. G. Gifford made and signed, and why was it made there, and who was present at the trade?

10th. Was your wife present at said trade, and did she see Jo. G. during that trip over here from Murfreesboro?

11th. Did said Jo. G. Gifford pay you any money on that trip, or when the trade was made; if so, what amount did he pay you, and what did you do with said money, and how long did you keep it in your possession, if at all?

12th. Did Jo. G. Gifford take back with him the money so paid by him to you, and was it not understood and agreed upon before Jo. G. came over?

13th. When was any note executed by Jo. G. Gifford to your wife and who wrote it, and who was present, and who did Jo. G. return it to, and who carried it to your wife?

14th. If you say that you paid any of the debts secured either in the conveyance to Bennett, trustee, or head trustee, you will state what debt you paid, and where, and the amount of the same; when you paid them and to whom you made the payments.

15th. You will state fully and particularly the value of each item; the property conveyed in your three several deeds to head trustee, Bennett, trustee, and Jo. G. Gifford at the dates of the conveyances. State particularly what has become of each article of property so conveyed.

16th. State fully and carefully if the rents or profits of any of the real estate conveyed by you as aforesaid, or if any of the personal estate has been sold and the proceeds aforesaid, from any source, directed to the payment of debts mentioned in said deeds. If you say yea, gives the dates, amounts, and to whom paid.

17th. Has Bennett or Head as trustees, ever taken charge of any of the estate conveyed to them? If so, state when and how, and why they did?

18th. State carefully what personal estate there is now in existence that you conveyed either to Jo. G. Gifford, Head or Bennett, and its value?

19th. When did you go into the possession of the Donoho tract of land, purchased by DeBow, executor of Donoho? and have you not remained in possession up to this date?

20th. Did you ever tender or offer to deliver up the possession of said place to DeBow, or any of the Donoho heirs? If you say yea, state when you did so, and where, and to whom, and who was present.

Cross-interrogatories to be answered by Gideon Gifford, propounded by Shackelford and Helms, sol. for compl't:

Cross-int. 1st. Are you the father of the def't, Jo. G. Gifford, and have you not given your deposition once in this cause?

53 2nd. If you say there was an agreement between you and your wife in regard to the investment of her money in the Donoho tract of land, state the date of that agreement. How long was it after you purchased the said Donoho tract of land was it before you made said agreement with her, and who were present?

3rd. State the amount of money she received from her father's estate, and was it all received at one time, or at different times? If at one time, give the month and year in which she received it. If at different times please state the date of each receipt and the amount thereof. State this fully, and if received in different amounts at different times, what did she do between the time she got her first money and the time she agreed for you to make a payment with it on the said Donoho tract of land.

4th. From whom did she receive said money, and at what place was it paid to her, and how far from home; that is the place you then lived, and if not at home, how far was it from home; and did she receive it all or any part thereof; or did you receive it as her husband? State how this was fully.

5th. If you had any power of att'y from your son, Jo. G. Gifford, to wind up or discharge any of said debts, &c., was it ever recorded? If so, when and where; and produce the original, and make it a part and exhibit to your deposition.

6th. Have you not employed Jno. W. Head and Son, or one of them, to defend these suits, and have you not promised to pay them for their services in attending to these suits? If you have not done so, who has employed them and promised to pay them; and who employed Judge McClain to defend these suits since the death of the said Jo. G. Gifford?

and who promised to pay him for his services in these suits? State all about this matter fully.

7th. Is not the estate of Jo. G. Gifford now insolvent aside from the $4,000 claimed to be due by him to your wife; if not insolvent, what is his estate worth?

8th. Who now has the note that you have in a former deposition said that Jo. G. Gifford gave to his mother for said $4,000, or two notes, one for $3,500, and the other for $500? If you have them, file them as an exhibit to your deposition.

9th. Have you not looked up the testimony in these cases, talked to the witnesses as to what they would swear, and consulted with John W. Head and the other att'ys in the case, or some of them, frequently, in regard to these cases; in other words, have you not managed the entire matters outside of the legal and strictly professional parts? If you have not, who has done this part of the work, especially since the death of the said Jo. G. Gifford? State all about the matter fully.

Interrogatories to be propounded to John Reese and W'm Hale, Hartsville, Tennessee:

Int. 1st. State your residence, age, and occupation?

2nd. State whether or not you are acquainted with the Gifford mill, on Peyton's Creek, in Smith Co., Tenn.? State the value of said mill and mill site in June, 1867; also state its value at this time.

4th. Are you acquainted with the Donoho tract of land near Hartsville, on which Gideon Gifford now lives? State its value in June, 1867.

5th. Are you acquainted with the small parcel of land purchased by Gideon Gifford of T. L. Winston, lying between the Donoho tract and the pike? If so, state the value of the same in June, 1867.

6th. Are you acquainted with the tract of land on which Gifford lived at the time he purchased the Donoho tract of land? If so, state its value in June, 1867.

54 7th. Are you acquainted with the small place called the Tan yard Place, adjoining the lands of John Hutchings? If so, state the value of the same in June, 1867.

8th. State whether or not the several parcels of land mentioned are in separate and distinct tracts; and whether they have separate and distinct boundaries. State all the facts.

9th. State any other fact or facts within your own knowledge that may be of benefit to either party.

Cross-interrogatories to be propounded to John Reece and W'm Hale, by J. J. Turner, sol. for def'ts:

Cross-int. 1st. How much would said mill and each one of said tracts of land spoken of by you have rented for per annum from 1866 to 1874? Give the value of each place per annum and your knowledge of said value.

2nd. Are you good judges of the value of land, and have you bought or sold any since 1866?

Cross-int's by Shackelford and Helms, sol's for compl'ts:

Cross-int. 1st. Has not Gideon Gifford been to see you, and talked to you in regard to giving your deposition in this cause before you gave your testimony? If so, please give in detail all he said to you in regard to the matter; and if he did not talk with you on the subject, then state

who did, and all that was said on the subject, and when and where it occurred.

2nd. If you give the value of these lands, mills, &c., state how you arrive at the same, and what your age and occupation now is, and what business you have followed heretofore; and the state the extent of your transactions in buying and selling mills, lands, &c., and where you had such experience.

3d. Where were you in 1867, and how can you recollect the value of these said lands, mills, &c., so accurately in 1867, now; and what relation are you to said Gideon Gifford or wife, either by marriage or otherwise?

Opened by consent March the 4th, 1874.

HEAD & SONS.
SHACKELFORD & HELMS.

Answers of Gideon Gifford to interrogatories filed:

Ans. 1st. I am acquainted with Benj. Rush; I have known him about 13 or 14 years; he lived with me one year or two; he now lives near Tompkinsville, Ky.

Ans. 2nd. He did have a conversation with me about DeBow wanting him to swear in regard to a title-bond being given me for the Donoho land. Rush introduced the conversation at my house one night in 1868. I think my wife, my daughter Mary, myself, W'm Harper, and some ladies, I cannot now remember who they were, were present. Rush told me he had a conversation with DeBow, or rather DeBow with him, and DeBow wanted him, Rush, to swear that he, DeBow, had given me a bond for title to the Donoho land; and Rush said that he did not know anything about the bond. He said that DeBow told him if he would swear it he never should lose anything by it.

3rd. There was an agreement between my wife and myself in regard to investing her funds. The agreement was that her money was to be paid on the Donoho land, and she was to have an interest in the land in proportion to the amount of her money paid on the land; and the title when taken was to be made accordingly.

Ans. 4th. It was because I never got any title, and could not make her any.

55 I made the sale to Jo. G. Gifford to secure my wife in the amount of money she had in the land. I had no other way to secure her, and that was why it was made, and by her request, inasmuch as we could not get a title to it.

6th. No; he never gave me any title-bond, nor was I at his house then; I was never in his house but once or twice in my life, to the best of my knowledge and recollection; he never at any time gave me a title-bond or memorandum of any kind about the land.

7th. I never had any such conversation with Rush at any time.

8th. I wanted him to give me $5,000, but he said $4,000 was as much as he could give.

9th. So far as I was interested, I was not anxious to sell the land; my wife wanted it sold to get her money out of it.

10th. Jo. G. Gifford would not buy the land until I agreed to accept a power of att'y to wind up the deed of trust business; and on his death-bed he requested me to see that his mother got her money out of the land, or that she should be satisfied about it.

11th. My deposition has been taken before in one of these cases; and I now it for both cases.

12th. I don't know that I do, except what I have stated.

13th. The reason why the bill was dismissed which was filed in the chancery court at Gallatin was because my att'y, Col. Head, advised me to do it.

Answers of Gideon Gifford to int's filed by J. J. Turner, sol. for defendants:

Ans. 1st. I did not threaten Rush with personal violence at any time. I saw Rush day before yesterday at Tomkinsville, Ky. I also saw him about three months ago pass through Hartsville; I think in the fall of 1868, at night; I do not know the day of the week.

3rd. I don't think I ever received any means belonging to my wife; she received it at different times, gave it to me, and I paid it to DeBow. I don't recollect the times or the places.

4th. She was to have an interest in the land in proportion to amount of her money paid for the same; and I sold the land to get her money out of it, at her request, because we could not get a title to the land.

5th. I did know that a deed or bond was necessary to convey land in 1859, and I tried hard to get one. I had traded some in land at that time. When I made the trade I had the promise of a bond for title, and also took possession of the land; and I thought I had an equitable title for the amount of money I paid on the land, and still think so. I knew all test me. It was a parol sale. The land has greatly depreciated in value since I bought it.

6th. I did not try to sell the land to any one. It was my wife who wanted it sold to my son Jo. G. Gifford, as she wanted him to manage her means that were in the land. I had made a deed of trust of nearly all my means, and did not have more than enough left to secure my wife, and wanted her to have her money out of the land. Jo. G. Gifford lived at Murfreesboro' at the time—about 40 miles from the land.

7th. I have the power of att'y from Jo. G., and it is herewith filed as Exhibit No. 1.

56 8th. I don't remember the time that Jo. G. was at my house, but it was not long before the sale.

9th. The trade was made in Gallatin, in Col. Head's office; it was made there because I had told my wife that I would meet Jo. G there, and make the trade. It was made in Col. Head's presence, & he drew up the papers.

10th. My wife was not present. I think Jo. G. came to my house the night after the trade.

11th. Jo. G. Gifford paid me all the money on that trip, $4,000. The day the trade was made I paid the money back to him after he saw his mother, and she so requested. I kept the money until Jo. came up to see his mother and returned to Gallatin.

12th. I don't know what agreement was made before he came over. I suppose he carried the money back with him. I took his notes payable to his mother for $3,500 of the money, and to W'm Gifford for $500.

13th. The notes were executed the day of the trade, I think, and I gave one to my wife and one to W'm Gifford, my son. Jo. G. Gifford wrote the notes. I don't recollect who was present.

14th. I paid Col. Head one debt, about $450 or $500. I paid R. A. Bennett about $300. I paid Head nearly all the debt, in lumber at the Gallatin landing, in 1867, I think. I paid Bennett a part at the same time in lumber; and about two years ago I paid him the balance in a note. I paid Winslow Hart about $500 in plank, corn, and a note for $300 on G. W. Miller, and also some cotton. I paid T. M. P. Hall about

$400, and some other smaller debts to different parties. The mill debts have nearly all been paid.

15th. I cannot give all the property conveyed in the different deeds; some has been worn out, some died, some sold, and the sheep nearly all killed by dogs. I thought I was authorized to dispose of what was sold, so that it went in payment of the debts mentioned in the deed of trust.

16th. The debts mentioned in my 14th answer were paid by myself and W'm Gifford. I don't think much of the proceeds of the property sold was used in payment of debts mentioned in the deed of trust. I sold off to Randle Reese about 2 acres of the land for Jo. G. for $125, and paid the money to Jo. G. Gifford.

17th. Bennett nor Head have ever taken charge of any of the property conveyed.

18th. I have nearly all, except as above shown, but do not know its value.

19th. I went into possession the next Thursday after I bought it, and been possession ever since, by renting it, &c.

20th. I tendered it to DeBow by filing the bill for the purpose, and when Barksdale offered me what he said was a title, I told him I did not want it; that I wanted the money back. This was said some time after the bill was filed.

Answers of Gideon Gifford to cross-int's propounded by Shackelford and Helms, sol's for complainants:

Ans. 1st. I am the father of def't, Jo. G. Gifford, and have given my deposition once before in one of these cases.

2nd. I made the agreem'nt with my wife before I bought the land from DeBow. I don't know that any one was present when I made the agreement with my wife, except my own family. I spoke of the agreement to DeBow before I bought the land.

57 3rd. She received $2,900 from her father's estate; it was not all received at one time. I cannot give the dates at which she received it. I don't know that the money was used in any way before it was paid on the land.

4th. She received the money mostly from her brother, who was administrator of her father. Part of it was paid to her at my house and part at her brother's house, about 12 miles from my house. I did have, and it has been registered in the reg'r's office of Trousdale Co., and is filed with this deposition as Exhibit No. 1.

Ans. 6th. I employed Head and Sons to attend to these suits. I am authorized by the power of att'y to do so; or I so understand it. Col. Head employed Judge M'Clain for me at my request. I promised to pay them. His estate is not insolvent, as I am informed. I think it is worth $3,000.

8th. My wife has the note; but it is for $3,500 instead of $4,000. I have never had them since I delivered them for Jo. Gifford; or if I had them I would file them.

9th. I have talked to witness's counsel, and have done and am doing all that I can, at Jo. G. Gifford's request, to gain these suits, if it can be done fairly and honestly; and I am anxious for my wife to get her money that was paid on the Donoho tract of land, inasmuch was paid out by me for the land.

GIDEON GIFFORD.

Answers of M'r's Prudence Gifford to interrogatories filed:

Ans. 1st. I am acquainted with Benj. Rush.

Ans. 2nd. He lived in the neighborhood of Hartsville; he was frequently at our house.

3rd. I heard Rush, in a conversation at our house in 1868, with my husband, say that DeBow had tried to get him to swear that he had given my husband a title-bond, and he, Rush, said that he knew nothing at all about it. Rush commenced the conversation himself, and said that DeBow told that if he would swear it he should not lose anything by it.

4th. My deposition has been once taken in one of these cases, and I adopt it as my deposition in both cases.

5th. The agreement was, at the time I paid my money on the Donoho tract of land, that the title was to be made to me in proportion to the amount of my money paid on the land.

6th. I was not willing for my money to be paid for the land, unless I could get a title to that extent.

7th. After we could not get a title, I became uneasy about my money. They would not make us a title, is the reason we did not get it. I consented to the sale to Jo. G. Gifford in order to get back my money that had been paid on the land.

8th. I never heard of my husband going to take the bankrupt law at the time the conveyance was made. I had never heard him speak of it until after he had taken it.

9th. I don't know of anything that I now think of.

Answers to cross-int's propounded by J. J. Turner, sol. for def'ts:

Ans. 1st. I don't know where the trade was made; I was not present. I did not see or handle the money. M'r Gifford, my husband, brought the note to me. It was written by my son Jo. G. Gifford, and was for $3,500. I don't know the exact date; the note will show for itself; it is at home.

He never went into possession of any of the property, but his father was to attend to it for him.

3rd. It had been several months before the sale since I had last seen Jo. G. my son; probably less time.

4th. Rush introduced the conversation. Who was present or what time it was I do not now remember. I remember that M'r Gifford, Rush, Hutchings, Harper, and my daughter, Marietta Carpenter, were all that were present that I now remember.

5th. He talked about it to me to-day, and I have heard him speak of the conversation with Rush frequently; I do not know how often.

6th. I did not know that my husband when he left home to go to Gallatin, would make the trade with Jo. G. I knew he was going there to meet him for that purpose. I was to take Jo.'s note for the money and loan him the money. I never knew that the trade had been made until the note was brought to me. I was willing to the trade, and M'r Gifford was to make the trade for me.

7th. Neither of us ever had any title, either jointly or separately, that I ever heard of.

Cross-int's. Answers of M'r's Prudence Gifford to cross-int's propounded by Shackelford and Helms, sol's for compl'ts:

1st. I am the wife of Gideon Gifford, and the mother of Jo. G. Gifford now dead.

2nd. I made the agreement with my husband in regard to investing my money in the Donoho land before the land was bought. We were living on the land when the money was paid.

3rd. I did not take any writing or I would file it if I had. I think it was made in 1858. I cannot remember the month.

4th. I did not have the money very long before I gave it to my husband to pay for the land. I kept the money myself until I gave it to him to pay on the land. My husband had nothing to do with it. At the time the agreement was made with my husband the money was in the hands of my brother who was the adm'r of my father; I have explained fully that the agreement made with my husband was made before I had received the money from my brother the administrator.

5th. I received the money and gave a receipt for it. I don't recollect how often or how much at a time I received. I think the first payment to me was about 1858 or 1859, and the last several years after that I received about $2,900 in all, and never spent any of it.

7th. Yes, he gives these suits attention, and is very diligent in getting up proof; and has employed Head and Sons, and Judge M'Clain as I understand, to attend to it.

8th. I have the note but do not wish to file it with this deposition. It is dated 10th June, 1867, and is for $3,500.

9th. I have not filed my claim against my son's estate, but will do it when I think proper.

10th. I suppose his intention was to sell the land to get my money out of it.

PRUDENCE GIFFORD.

59 Answers of W'm Harper to interrogatories filed:

Ans. 1st. I am about 30 years old; live about three miles from Hartsville; am a farmer.

2nd. I am acquainted with Benj. Rush; he lived near Hartsville when I first formed his acquaintance. I don't know where he lives now.

3rd. I heard Rush say in a conversation at M'r Gifford's one night in 1868, that DeBow was trying to hire him to swear a lie about a title-bond. I heard him also say that night he had never heard Gifford say anything about the title-bond. This is about all that I remember.

4th. I don't know of anything else.

Answers to cross-int'r's filed by J. J. Turner, sol. for def't:

Ans. 1st. I do not recollect who all were present. I don't recollect the month or the day of the week; I know it was at night.

2nd. I lived at M'r Gifford's. I don't know where Rush lived then. Rush commenced the conversation.

3rd. I do not remember all the conversation; have given all I do remember.

his
W'M + HARPER.
mark.

Witness:
J. W. JOHNSTON, *C. & M.*

Answers of Winslow Hart to interrogatories filed:

Ans. 1st. I am acquainted with Gideon Gifford. I have several claims against W'm Gifford. I suppose they were mentioned as secured in his deed of trust; I do not know as I never saw the deed of trust.

2nd. I have not the evidence of debt before me; that is, the notes

and accounts. Therefore I cannot state the amounts or dates. Part of the debts have been paid.

3rd. A part of the debts have been paid; part were paid in 1865, part in 1867, part in 1868 and in 1870. I think the amount paid in 1865 was paid before the deed of trust was made. I have received in all on my debt $547.37, which was paid to me by Gifford himself.

4th. I don't know of anything else that I think would be of benefit to either party.

Answers of W. Hart to cross-interrogatories, filed by J. J. Turner, sol. for def'ts:

Ans. 1st. I have never taken any steps to have the deed of trust wound up.

2nd. I cannot answer as I do not know. I suppose Gifford has remained in possession all the time since 1866. He has been living on the Donoho land ever since that time.

3rd. There has not been that I know of.

4th. M'r Gifford has a good many lawsuits.

5th. I do not know whether it has depreciated in value or not. It is not in as good repair as it has been.

Cross-int'r's propounded to Winslow Hart by Shackelford & Helms:

1st. My debts are in notes and accounts. I now have them before me as follows: one note for $130 due Jan'y 1st, 1855; one note for $820.36 due Feb'y 1st, 1858, credited by $300 Dec. 25th, 1870; one note for $244.12 Jan'y 1st, 1861; one account for the year 1861, for $143.45; one account dated in 1862 for $168.45; one account for 1863 for $35.35; one credit to all the accounts together on Jan'y 1st, 1865, for
60 $18.75; one other credit for $166.62, May 1st, 1867; one credit for $102, May the 1st, 1868. The above are all the debts I have against Gideon Gifford. The credits above were given for payments made by Gifford himself.

2nd. No; I have taken no note, obligation, or other evidence of from Gideon Gifford for my claims or any part of them, since he has been declared as a bankrupt.

W. HART.

Answers of W. S. Alexander to interrogatories filed:

Ans. 1st. I am 64 years of age; I reside at Dixon's Springs; I am a merchant and have been for many years.

2nd. I have a debt against Gideon Gifford. My debt is a judgment rendered at the March term, 1866, of the circuit court of Smith Co., Tennessee, for $1,460.30.

3rd. I have security by deed of trust made a short time after the judgment was rendered to J. W. Head as trustee, covering my debt, but I do not know that it is much security if any. I think Col. Head wrote the deed of trust; it includes the equity of M'r Gifford in the Donoho tract of land in controversy.

4th. No part of my debt has been paid.

5th. My claim is in a judgment which is herewith filed, or a copy of the same, as exhibit to my deposition.

6th. I don't know of anything.

Ans. to cross-int'r's propounded by J. J. Turner, sol. for def'ts:

1st. I do not know what he has done.

2nd. I have done nothing myself; I don't know what others have done.

3rd. Nothing.

Answers to cross-int'r's filed by Shackelford & Helms, sol's for compl't:

I have taken no obligation or any other evidence of indebtedness from Gifford in satisfaction of said debt or any part of it since Gifford has been discharged in bankruptcy.

2nd. I put the claim out for collection. It was sued on and judgment obtained, and after I found nothing could be made by an execution, I accepted the deed of trust.

W. S. ALEXANDER.

JAMES BANKHEAD
vs.
JO. G. GIFFORD ET ALS.

JAMES BANKHEAD
vs.
JAS. R. DEBOW ET ALS.

In the circuit court of the U. S. at Nashville. Equity.

Interrogatories to be answered by the several witnesses named, and the depositions are taken to be read in both suits.

Interrogatories propounded to Marietta Carpenter by Jno. W. Head, sol. for def'ts:

Int. 1st. State your relationship to Gideon Gifford and Prudence Gifford.

2nd. State whether you know Benj. Rush and whether he came to your father's house at any time.

3rd. State whether or not in the fall of 1868, at the house of your father Gideon Gifford, you heard him say anything about J. R. DeBow trying to hire him to swear that he had heard Gideon Gifford say that DeBow had made him a title-bond to the Donoho tract of land. If so, state what he said; state how the conversation came up and all that was said.

4th. State whether or not you ever heard any conversation between your father and mother relative to the money she drew from her father's estate; and whether or not they said there was any agreement between them as to the vesting said fund in the Donoho tract of land.

61 State all you may have heard them say on the subject before the bringing of these suits, and before the sale of the property by your father to Jo. G. Gifford.

5th. State whether or not your mother became uneasy about the fund since the war; what caused the uneasiness, and whether anything was done or any trade made to secure or pay her the amount of her means vested by your father in the Donoho tract of land. State all you may know on this subject.

6th. State any other facts within your knowledge that may be of benefit to either party to this suit.

Cross-interrogatories to be answered by Marietta Carpenter, propounded by J. J. Turner, sols. for the def'ts:

Cross-int. 1st. Where do you now reside, and when did you last live in Sumner or Trousdale County, Tennessee?

2nd. If you heard any conversation between your father and mother as to her means going into the Donoho tract of land, when and where did it occur, and who was present?

3rd. Why did not your father have the title to the Donoho tract of land made to your mother and himself instead of to himself alone?

4th. Did you know anything of the sale to Jo. G. Gifford? if so, state all that you know of the same.

5th. If you say that you heard any conversation by Benj. Rush as to J. R. DeBow, state when and where it was, who were present, who commenced the conversation. State all that was said, and why you recollect it; and did your father tell you in advance that you must recollect it?

Cross-int's propounded to Marietta Carpenter by Shackelford and Helms, sol's for complainants:

Cross-int. 1st. What is your age at this time?

2nd. How long after your father had purchased the Donoho tract of land was it before you heard the agreement between your father and mother that he was to invest her money in said place for her benefit? If you heard any such agreement please state the year and month in which you heard any agreement pertaining to such an agreement between them, and then state how it is you remember it so well.

3rd. Did you see your mother pay your father the money; if so, when and how much? Did your father then have the money in his possession, or had he already paid it on said land or something else, and to satisfy your mother agreed that she should have an interest in said land equal to the amount of her money he had used? State fully and minutely how this whole thing occurred.

Interrogatories to be answered by Bettie Duffer, propounded by John W. Head, sol. for def'ts:

Int. 1st. State your residence, and your relationship to Gideon and Prudence Gifford.

2nd. State whether or not your mother received any money from her father's estate; and if so, state the amount as near as you can.

3rd. State whether or not your father paid this sum on the Donoho tract of land; and if so, state whether or not it was upon any agreement between your father and mother, and what that agreement was. State all the facts.

4th. State whether or not you lived in Murfreesboro at the time Jo G. Gifford lived there, and whether or not he was engaged in
62 business there, and what kind of business, and whether he made any money while engaged in business. State all the facts.

5th. State whether or not the title to any part of the Donoho tract of land was made to your mother in the place of her money; and if not, why was it not made to her, and what arrangement, if any, was made to secure your mother's money to her? State all you know on this subject.

6th. State any other facts pertinent to the issues involved that may be of benefit to either of the parties to these suits.

Cross-interrogatories to be answered by Bettie Duffer, propounded by J. J. Turner, sol. for def'ts:

Cross-int'r. 1st. When did your mother receive any money, and who from, and what did she do with it? State all that you know personally on that subject.

2nd. Why did your father have the title to the Donoho tract of land made to himself, instead of to your mother and himself, jointly?

3rd. What do you know personally of the sale of to Jo. G. Gifo d?

4th. Did he, Jo. G., have any surplus capital at the time of the trade, and how did he raise $4,000 for said trade?

5th. Was your mother present at the trade between your father and Jo. G. Gifford?

6th. Were you present at said trade, and when did you see them?

7th. What was Jo. G. worth at the time of the trade, and did he ever go into possession of said property?

8th. How long has Gideon Gifford been in possession of the Donoho tract of land?

Cross-int'r's to be answered by Bettie Duffer, propounded by Shackelford and Helms, sol's for compl'ts:

Cross-int'r. 1st. What is your age at this time?

2nd. If you heard any agreement made between Gideon Gifford & his wife in regard to his using some of her money in the payment of the Donoho tract of land, then state the year and the month in which you heard it, and, if you heard them talk of it more than the one time, then give the dates of the different times, and state particularly who was present each time, who then had the possession of the money, or was it already spent in the purchase of said land or something else? Did you see any money pass between them? If so, how much, and when? Give all the facts pertaining to this matter.

3rd. Did M'r's Prudence Gifford receive the money coming from her father's estate in person? If so, from whom, or did her husband receive it, and was it all received at one time or at different times? If at different times, what length of time intervened between each payment, and who received it each time, Gideon or his wife?

63 JAMES BANKHEAD }
vs.
GIDEON GIFFORD ET ALS. }

and

JAMES BANKHEAD }
vs.
JAS. R. DE BOW ET ALS. }

In the circuit court of the U. S. at Nashville, Tenn. Equity. Answers to int'r's by the several witnesses named.

Be it remembered that on this, the 24th day of Jan'y, 1874, at my office in the town of Brownsville, Tenn., by virtue of the power & authority vested in me by the foregoing and hereto attached commission, I caused to come before me M'r's Marietta Carpenter and M'r's Bettie Duffer, to examine them, upon their corporal oath, upon the int'r's and cross-int'r's hereto attached, as witnesses on behalf of def'ts in the said two causes above named, none of the parties to said suits being present. The said Marietta Carpenter, aged 25, being sworn, deposed as followed:

Answers of Marietta Carpenter to the int'r's propounded to her by John W. Head, sol. for def'ts.

Ans. 1st. I am the daughter of Gideon and Prudence Gifford.

2nd. I know Benj. Rush, and he came to my father's house frequently.

3rd. Benj. Rush came to the house of my father, Gideon Gifford, in

the fall of one year, and to the best of my recollection it was in the fall of 1868, and staid all night; and whilst there in my father's house at said time, I heard a conversation between my father, Gideon Gifford, and Benj. Rush in regard to the Donoho tract of land, and in that conversation I heard M'r Benj. Rush tell my father *my father* that one of his neighbors was trying to ruin him (my father), and when I heard this it attracted my attention, and it was the first thing that attracted my attention to said conversation, but do not know how the conversation commenced, nor how it came up; and in that conversation Benj. Rush told my father that J. R. De Bow had said to him (Benj. Rush) that if he (Rush) would swear that he (Rush) had heard my father say that he (De Bow) had given him (my father) a title or title-bond to the Donoho tract of land, that he (Rush) would never lose anything by it, to get him (Rush) to swear to a lie. And then my father remarked, "Do you hear that? Confound him! He knows he never gave me any title or title bond." And my father seemed to be perfectly astonished.

4th. I have heard my father and mother talk about the money she drew from her father's estate, and have heard them in conversation say that there was an agreement between them that the same was to be vested in the Donoho tract of land; and this before the bringing of these suits, and before the sale of the property by my father to Jo. G Gifford.

5th. My mother did become uneasy about the fund since the war, & it was because there was no good title to the land, and she was afraid she would lose her money that had been vested in the Donoho tract of land; and that tract of land was sold to Jo. G. Gifford that her money might be saved that had been so invested.

6th. I do not now recollect anything else that would be of any interest to either party to this suit.

Ans. to cross-int'r's by Marietta Carpenter, propounded to her by J. J. Turner, sol. for def'ts:

Ans. 1st. I now reside in Brownsville, Tenn., in the Co of Hay-
64 wood. I last lived in Trousdale Co., in the fall of 1871—in that portion of said Co. which had been cut off from Sumner Co., Tennessee.

2nd. I had heard conversations between my mother and father as to her means going into the Donoho tract of land at various times, at their house, but do not remember any particular time, nor who were present.

3rd. I do not know, but my impression and information was there was no title made; always heard so.

4th. The sale was made to Jo. G. Gifford, and was done to secure my mother in her money that had been invested in said tract of land. Jo. G. Gifford did not want to make the trade at all, but did it to save my mother, and at her request.

5th. In my previous answer No. 3 to int'r. No. 3, propounded by Jno. W. Head, hereinbefore, I stated, as near as I can recollect, the portion of the conversation I heard between my father and Benj. Rush, and therein all that I heard of it. It was at my father's house, and to the best of my recollection it was in the fall of 1868. My recollection is my mother was present. I do not recollect who were present. I do not recollect who commenced the conversation, and my father did not tell me in advance to recollect it, nor that I must recollect it, and I did not notice or pay any attention to what was going on whilst my father and M'r Rush were at his house until I heard M'r Rush tell my father

that one of his neighbors was trying to ruin him, and then I listened particularly to the conversation, and do not remember any more of said conversation than was stated before by me in said answer No. 3 to int'r. No. 3, by John W. Head.

Answers by Marietta Carpenter to int'r's propounded to her by Shackelford and Helms, sol's for compl'ts:

Ans. 1st. I am 25 years of age, and will be 26 of age in Feb'y next.

2nd. I do not remember the time I first heard of the agreement between my father and mother that he was to invest her money in the Donoho tract of land for her benefit, but I know it was before the sale of said tract of land to Jo. G. Gifford, and before the bringing of these suits. I remember it so well because I heard it talked of so often by father and mother and by other members of the family, and it was talked of frequently in the family, and I heard my mother speak of it, and more frequently than any of the rest. My mother told me several times that she had told my father she wanted her money to put in land for a home for her, and that the Donoho land was the land she wanted.

3rd. I never saw my mother pay my father the money, and do not know how much, and do not know that he ever had it in his possession, and do not know that he had already paid it on *on* said land or something else, and do not know that father, to satisfy mother, agreed to let her have an interest in said Donoho tract of land equal to the money of hers. I do not know about these matters, but it was always my impression and understanding that my mother's money was invested in the Donoho tract of land. And further this deponent saith not.

MARIETTA CARPENTER.

And the said Bettie Duffer, witness, aged 34, being sworn, deposed as follows:

Answers by Bettie Duffer to int'r's propounded to her by Jno. W. Head, sol. for def'd't:

Ans. 1st. I reside in Brownsville, Haywood Co., Tenn., and I 65 am a daughter of Gideon and Prudence Gifford.

2nd. I have heard my mother say she received money from her father's estate, but I never saw the money, and I do not know how much, except she told me she got about $3,000.

3rd. I do not know of my own knowledge that father paid the fund on the Donoho land, never having seen the money, but it was my understanding that he did pay it on the Donoho land. Before my father purchased the Donoho land, I heard my mother tell him she wanted him to buy it, and he told her he would not buy it without her money, and it was then that it was agreed between my father and mother for her money to be invested in the Donoho tract of land, for a home for her, and she always claimed it as her home.

4th. I lived in Murfreesboro at the time Jo. G. Gifford lived there, and he was in business there at one time—in the grocery business, and afterwards in the dry goods business—and he was successful in both dry-goods and grocery business, and made money there.

5th. There was no title to any part of said land made to my mother, and it was always my understanding that there was no bill given to my father nor to my mother, and I do not know why title cannot be made to her. The land was sold to Jo. G. Gifford that my mother's money might be saved to her.

6th. I do not now remember anything else that may be of benefit to either of the parties to this suit.

Answers by Bettie Duffer to cross-int'r's propounded to her by J. J. Turner, sol. for def'd'ts:

Ans. 1st. I do not remember when my mother received her money, but to the best of my recollection it was about the time my father traded for the Donoho land; and I do not know of my own knowledge what she did with it, except what she told me, and she told me that it was invested in the Donoho tract of land.

2nd. My understanding was there was no title made to any one.

3rd. I do not know anything personally, & what I know is from information.

4th. I do not know how much money Jo. G. had at the time of the trade nor how he got it to pay for the land, except he made money at Murfreesboro, Tenn., in his business, and was amply able to buy the land, in my opinion.

5th. I do not know; I was not present myself.

6th. I was not present at said trade, but saw my brother about the time the trade was made, and frequently, because we lived in the same place, and I saw my mother not long after the trade. She lived some distance from where I lived.

7th. I do not know what he was worth at the time. He never moved to the said property.

8th. He has been living on it about 16 years.

Answers by Bettie Duffer to the interrogatories propounded to her by Shackelford & Helms, sol's for the compl'ts:

Ans. 1st. I am 34 years of age.

2nd. There was an agreement between my father and mother in regard to the purchase of the Donoho tract of land, and my father was unable to buy it, so he said, and keep the place he then owned, and it was between my father & mother agreed to buy the Donoho land for her, and to invest her money in it for that purpose. I do not remember the month and the year, but it was just before the purchase of the Donoho tract of land, and that was about 16 years ago, that I heard the agreement for her money to be invested in the Donoho tract of land. I have heard the said agreement spoken of frequently since my father traded for the Donoho tract of land, but I cannot now remember the particular times the same was spoken of, nor who was present. I did not see the money at all—at least, do not recollect of seeing it.

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3rd. I do not know which one received it, and do not think it was all received at one time, but at different times; and do not know the different amounts received at the different times, nor who received it at each time. And further this deponent saith not.

BETTIE DUFFER.

The foregoing answers to int'r's, or depositions, were taken by me, as stated in the caption, and reduced to writing by me, and I certify that I am not interested in the cause, nor of kin or counsel to either of the parties; and that I sealed them up and put them in the post-office, without being out of my possession or altered after they were taken.

In testimony whereof I have set my hand and affixed my seal of of-

fice, at office in the town of Brownsville, Tenn., on this 24th day of Jan'y, 1874.

JOHN C. READ,
Com. & U. S. Commissioner.

Opened by consent, March 4th, 1874.

HEAD AND SONS.
SHACKELFORD AND HELMS.

67 On the 18th day of April, 1873, interrogatories were filed as follows:

Int'r's to be propounded to Gideon Gifford, by the compl't:

Int'r. 1st. State the amount, character, and origin of your indebtedness to W. S. Alexander. State the payments, if any made, and state all the facts connected with the execution of the deed of trust to Jno. W. Head on the 18th day of Feb'y, 1867, for the benefit of said Alexander.

2nd. State whether or not you purchased the Donoho tract of land near Hartsville; from whom you purchased it; the terms of the purchase; whether the contract or terms or any memorandum was in writing; or did it all rest in parol; was there any title bond, or other writing about said purchase? State all the facts.

3rd. State how much you have paid on said purchase land, and when paid; what improvements, if any, you have made on the same since your purchase, and their value; what would be a reasonable rent for the land per year, since you have had the same in your possession?

4th. Have you or not ever ratified said sale of the land since it was made? Has there ever been any writing about it? Have you ever demanded a title bond? State all the facts.

5th. What was the Donoho tract of land worth at the time of the deed of trust executed in favor of W. S. Alexander; and what was it worth at the date of the conveyance to Jo. G. Gifford, on the 10th of June, 1867?

6th. Were either of said conveyances made to hinder and delay creditors, or in contemplation of bankruptcy; or were they fair & bona fide? And had you any intention or expectation at their date of applying for a discharge under the bankrupt act? State all the facts.

7th. State what property your wife had. Who was her father? Did she get any property from his estate? In what did it consist? Who received it, and when? If it came to your hands, upon what terms and conditions did you receive it? Was there any contract about it between yourself and wife? State fully all the facts.

8th. Were any funds received by you belonging to your wife invested in the Donoho land; if so, how much, and when? State all the facts.

9th. What was the consideration of the conveyance made by you to Jo. G. Gifford? How and in what was the consideration paid? State all you know on this subject.

10th. State the incumbrances on the property conveyed by you to Jo. G. Gifford, at the date of said conveyance. State the value of the property conveyed; the character, location, and kind of property, &c.

11th. State whether Jo. G. Gifford executed any note to his mother; if so, for how much, its consideration, &c. At the time of the trade was any money paid? What disposition was made of it? State all the facts.

12th. Have you occupied the Donoho tract of land since the sale to Jo. G. Gifford; or have you had any of the other property? If so, upon what terms and in what way? State fully all the facts in regard to it

13th. State whether you were justly indebted to the complainant, Ja's Bankhead, at the time you filed your petition in bankruptcy. State the foundation of the alleged indebtedness. State the nature, character, and extent of the business transactions you had with him. State
68 fully and clearly all the facts in regard to any claim or claims, or any debts he held against you.

14th. You will state anything else you may know that will be of benefit to either of the parties to this suit, or that will serve to illustrate the issues between them.

A. McLAIN, & HEAD & SONS,
Att'ys.

Counsel for compl't, Ja's Bankhead, excepts to the following int'r's hereinbefore propounded by McLain, Head & Sons, att'ys to Gideon Gifford, by number and for the following reasons, &c., to wit:

To int'r. No. 1, or all of it, that prove anything more than as to the validity of W. S. Alexander's claim and the amount thereof, for the reason, first, that by the instructions of the court proof was only to be taken upon that point. Second, because the proof was not taken within three months from the time the cause was at issue, and no good and legal excuse having been shown why the proof was not taken with the three months and to all of said interrogatories or answer thereto for the reason that said Alexander had lost all right to participate in the proceeds of the assets of the bankrupt Gideon Gifford, and all lien that he may have acquired by the said deed of trust, in that he has failed to prove his claim before the register in bankruptcy, or before any other competent person.

2nd. They also except to int'r. No. 7, and the answer that may be made thereto, for the same reasons that are contained with the foregoing exception to int'r No. 1, as found in reason numbered 1 & 2.

3rd. They also except to int'r's Nos. 7 & 8, for the same causes assigned in the exception to int'r. No. 6, and for the further reason that the answers thereto are not pertinent to any issue or issues joined in this suit.

4th. They also except to int'r's Nos. 10, 12, & 14, for the same causes assigned in the exception to int'r. No. 6, i. e., not according to the order of the court & not in time.

5th. They also except to int'r. No. 11, for the same reasons assigned in the exception to the int'r's No. 7 & 8, i. e., not according to the order of the court; not in time and not pertinent to the issue.

6th. They also except to int'r. No. 12, for the same reasons assigned in the exception to the int'r. No. 11, and for the further reason that def't does not stand in an attitude to question the validity of the claim of Bankhead against Gideon Gifford, bankrupt; that issue should have been made when he proved his claim.

SHACKELFORD & HELMS,
Att'ys for Bankhead.

And not waiving any legal right or exception to any of the foregoing int'r's in chief or to the answers thereto, now proceed to file cross-interrogatories:

Cross-int'r. 1st. Have you ever been out of possession of any of the property that you conveyed to Jno. W. Head, trustee, and to Jo. G. Gifford? If so, state how long you were out of possession, & of what the article or thing so out of your possession consisted, & what was the value thereof.

2nd. Is there anything or any records anywhere to show the
69 consideration of your indebtedness to W. S. Alexander? if so, please state where such record may be found; and is the evidence of your indebtedness to said Alexander in the form of a note, bond, or obligation; if so, does it appear on the face of the note or other writing for what consideration this note, bond, or obligation was made?

3rd. Have you not paid W. S. Alexander some money or that which is equivalent to, or that which Alexander received in lieu of money since you went into bankruptcy? if so, state the full amount of the same, and was all of this debt owing at the time you went into bankruptcy? If not, how much was due him?

4th. If your wife received anything from her father's estate, or from the estate of any one else, did she, or you for her, receive it through the hands of an administrator or executors? If so, did such administrators or executors have to make a settlement of the said estate with some chancery or county court? If yea, then state who was such administrator or executor, & with what court they settled or passed their accounts in regard to said estate, and if the administrator or executor did make such a settlement with any court, then make a certified transcript of the settlement of said estate a part of this your deposition, marked "A."

5th. If such money was received before the death of the donor, then was she not charged with it as an advance? If so, then produce the will, or any other duly authenticated record showing this fact, and make it a part of this your deposition as exhibit B.

6th. State the name of the lady you married, the name of her father, the date of your marriage, the date of her father's death and of her mother's death, then state your age, and the age of your wife; then state the date that it was claimed you received this money from your wife's father's estate for her, and the amount of it, then state the number of heirs your wife had at the time you received this money, if you did.

7th. If there was any contract between yourself and wife in regard to this money that she is said to have received from her father's estate, what was the date of this contract, or was it in writing or parol; if in writing make said written contract a part of this your deposition as Exhibit C.

8th. Were any of the same funds you received belonging to your wife coming from her father's estate invested in the Donoho lands? or did you mix this money with your other money and then just pay an amount on this land equivalent to that received by you from your wife's father's estate?

9th. How many and what amount of the incumbrance on the property at the time you conveyed it to your son J. G. have since been paid and discharged, and by whom paid and satisfied?

10th. What has become of all of the personal and perishable property that you conveyed to your trustees Head & Bennett & to your son Jo. G. Gifford? Did you not sell or otherwise use most if not all of it?

11th. Is not the estate of your son Jo. G. Gifford insolvent, and has he not paid his mother anything on this land? If so, how much and when?

12th. Did you not have a copy of these interrogatories sent to you, or the substance thereof, with a letter of instruction in regard thereto, and did you not know before giving your deposition in this case what ques-
70 tions would be asked you by your counsel as well as what would be asked the other witnesses on this occasion; and did you not

go to the counsel of your son Jo. G. & tell them what you would prove in this case, and that they must take your deposition, &c.?

SHACKELFORD & HELMS,
Sol's for Bankhead.

Interrogatories to be answered by M'r's Marietta Carpenter.

Intr. 1st. You will please state whether or not you are a daughter of Gideon Gifford; if so, state your age and when you ceased to be a member of the family.

2nd. Do you know anything of your own knowledge or from information from your father and mother as to any means or money she may have derived from her father's estate; what became of said means? Was there any contract or agreement between your father & mother relative to the same? And, if so, state how you know the fact; state the agreement, what became of your mother's means, &c. State all you may know on the subject.

(Counsel for Ja's Bankhead except to the foregoing in'tr's first because this testimony is not pertinent to any issue in this case, and, second, because this proof was not taken within three months after this cause was at issue, and no good and legal cause is shown why the same was not taken within three months; and, third, because there is no order of the court to take this deposition, &, 4, because these in'tr's are not signed by counsel or anybody else.—SHACKELFORD & HELMS, *Att'ys Bankhead.*

Exceptions overruled by the C. & M., and appealed to the court.)

And not waiving any legal right of exceptions the foregoing int'r's and answers thereto, now proceed to propound—

Cross-intr. 1st. If there was any contract between your father & mother in regard to any money coming to your mother from her father's estate, state whether it was in writing or in parol, and then state the date of this contract, and then state the date when your father received this money, if he did receive it.

2nd. Can you state what your father did with this money of your own knowledge? Did you see him pay it out? If so, to whom and when, and if he told you what he did with this very same money, then state the year when he told you, and what caused him to tell you, &c.

SHACKELFORD & HELMS,
Atty's for Bankhead.

Interrogatories to be answered by M'r's Prudence Gifford.

Intr. 1st. State you relationship to the parties and to Gideon Gifford.

2nd. State whether you were entitled to and obtained any means or money from your father's estate. Give your name, the amount, and kind of means or property, and state whose hands the same went into.

71 3rd. At what time did you receive, or were entitled to receive, the same? If it was not received by you, or did not come into your hands, you will state the reason; and state whether there was any contract or agreement between yourself and wife relative to said property. State when it was made and the nature of the same. State all the facts connected therewith.

4th. Was said property or effects received by your husband in pursuance of said agreement? What disposition did he make of the same? State all the facts.

5th. State whether you hold any note on Jo. G. Gifford; and, if so, state the consideration of the note, & file a copy of the same, with the answer to this question. State all you may know relative to the execution of said note.

6th. State whether you claim, and have all along claimed, an interest in the Donoho tract of land since said agreement and the *the* investment of your funds.

(Counsel for compl't Ja's Bankhead excepts to all of the foregoing int'r's propounded to M'r's Prudence Gifford, wife of Gideon Gifford, & any answers that may be made thereto—1st. Because it was not taken within three months after this cause was at issue, and there is no good legal cause shown why the same was not taken within the three months; 2nd. Because the proof in this deposition is not pertinent to any issue in this case; 3rd. There is no order of court to take this deposition; 4th. Because the wife cannot testify in behalf of her husband in regard to anything that has transpired since their marriage, and her whole testimony is incompetent; 5th. Because the in'tr's propounded to M'r's Prudence Gifford are not signed by counsel, or anything else.—SHACKELFORD & HELMS, *Att'ys for Bankhead.*)

And not waiving any legal right or exception to any of the foregoing int'r's and the answers thereto, now proceed to propound cross-int'r's thereto:

Cross int. 1st. If you or your husband Gideon Gifford received any money from the estate of your father, what was the date that you so received it? If you or your husband received it, was it not through the hands of the administrator or executor of your father's estate? If not, how and from whom did you receive it? If you received it in person, did you not hand it over to your husband immediately; and how long was it before he spent it from the time you gave it to him? If he received it himself, state the date; & then state how long after he received it was it before he spent it, or paid out this money; and did he put this money with his other money, or did he keep it to itself until he spent it?

2nd. If there was any agreement between you and your husband, in regard to the money coming to you from your father's estate, was it in writing or in parol? If in writing, make the agreement a part of this your deposition as Exhibit A, and give the date of this agreement.

3rd. How many heirs were there to your father's estate when settled up? In what co. did your father reside up to the time of his death; and does not the chancery or co. court in which he died and in which his property was located show the settlement of the administrator or
72 executor of his estate? If so, file a certified copy of that settlement, and make it a part of this your deposition.

4th. Was your portion of your father's estate received all at the same time by your husband, or in payments at different times? If at different times, state the date of each payment.

5th. Did you see your husband pay out this money he received from your father's estate? If so, when, where, and to whom did he pay it; and who else was present?

6th. Have you any receipt or other writing to show at what time your husband paid out money coming from your father's estate? If so, make it a part of this your deposition as Exhibit C, and state if it was not made since the payment. If so, when; and if you have any paper-writing to show when your husband received this money from your father's estate, make it an exhibit also to your deposition.

7th. State the date of your marriage, your age, the date of your father's death, and the date of the birth of your son Jo. G. Gifford.

8th. Had your husband any other property besides that he deeded away in trust to Head & Bennett, and then to your son Jo. G. Gifford? If so, state in what it consisted; its value, and what has since become of it. If he sold it, when, to whom, and for what price; and where was it located or situated? Give all the particulars.

9th. If you have any notes against your son Jo. G. Gifford for your interest, or that which is claimed as your interest, in the said Donoho tract of land, file them as a part of this your deposition as exhibits thereto, and state if these are genuine notes, and if they are the notes made by your son Jo. G. Gifford to you at the time of the transfer of your husband to your son Jo. G. Gifford of all of his property, or have they been made since; if so, how long since?

10th. Have you filed your claims and demands against your son with his administrator Duffer, at Murfreesboro', Tennessee? If not, do you intend to do so? And, if you do, will your son Jo. G. Gifford's estate be sufficient to pay all of his debts?

11th. Have you and your husband and children, who are witnesses in this case, not talked this whole matter over since the commencement of this suit, and did you not know what each one of your children and husband will swear in this case in regard to the money coming to you from your father's estate?

12th. Does your husband Gideon Gifford and son W. H. Gifford believe there is a God who will reward and punish according to our deserts?

SHACKELFORD & HELMS,
Att'ys for Ja's Bankhead.

Interrogatories to be answered by W. H. Gifford:

1st. State your relationship to the parties and to Gideon Gifford.

2nd. State all you may know, or may have heard from the parties, relative to the estate or property of your mother, derived from her father's estate, as to its amount, kind, and who received the same; the terms upon which it was received, and any agreement between your father and mother, &c. State all the facts fully you may know on this subject.

3rd. State all you may know relative to the property conveyed by Gideon Gifford to R. A. Bennett, as trustee. State the kind and
73 value of the same, &c.

4th. State the cash value of the Donoho tract of land on the 10th of June, 1867.

5th. State any improvements and their value, made by your father, on this tract of land.

6th. State whether or not your mother has, ever since her funds went into the hands of her husband, claimed an interest in the Donoho tract of land until the purchase of Jo. G. Gifford, and whether or not her husband has recognized that claim as valid. Have you or not heard them frequently speak of it? State all you know on this subject.

7th. State any other facts that will be of advantage to either of the parties to this suit that you may be in possession of.

McLAIN & HEAD & SONS, *Sol's.*

(Counsel for compl't excepts to the taking of the deposition and to the int'r's—1st. Because the proof to be made by this witness is not pertinent to any issue of this case; 2nd. Because this proof was not made within three months from the time this cause was at issue, and there is no good and legal reasons why the same was not taken within three months; 3rd. Because there is no order of the court to take this deposition.—SHACKELFORD & HELMS, *Att'ys for Bankhead.*

The exceptions above were overruled by the C. & M., and an appeal made to the court.)

And now, not waiving any right of legal exception to this deposition, proceed to propound cross-interrogatives:

1st. State your age and occupation; then if you state that you know anything about your father receiving any money from your mother's father's estate, and that there was any agreement about it, then state the date when he so received and from whom he so received, and whether it was all received at once or at different times; then state if you were present when the agreement was made; if made, was it in writing; if so, what became of it, and what was the date of this contract or agreement?

2nd. Did you see your father pay out this same money that he received from your grandfather's estate to any one? if so, to whom did he pay it? And give the date of the payment and who was present when the payment was made. Unless your father paid out this money in your presence, how can you say of your own knowledge what he did with it?

3rd. If your father received your mother's share of her father's estate, did he not receive it from the administrator or executor of the estate of your grandfather? If so, give their or his name; if not, then from whom was it received? and give the name.

4th. Who has been in the possession, use, and enjoyment of the mills known as the Gifford mills, on Peyton's Creek, from 1867 up to the present time; and who has been receiving the rents, issues, and profits thereof from 1867 up to this date? I mean the mills built by Gideon Gifford, and by him conveyed to his son Jo. G. Gifford.

SHACKELFORD & HELMS,
Att'ys for Bankhead.

74 JAMES BANKHEAD
vs.
JO. G. GIFFORD ET ALS.

Interrogatories to be answered by Ja's A. Andrews, R. M. Potts, j'r, H C. Ellis, John Huchings, Archie Allen, C. H. L. Bennett, B. S. Martin, N. W. McConnell, of Trousdale Co., Tennessee:

1st. State your age and occupation.

2nd. State whether you are acquainted with Gideon Gifford. If so, how long you have been acquainted with him.

3rd. Are you acquainted with his general character for honesty & truth? If so, is that general character good or bad?

4th. From that general character, would you give him full faith *faith* and credit, on oath?

5th. Are you acquainted with M'r's Prudence Gifford? If so, how long have you known her.

6th. Are you acquainted with her general character for honesty & truth? If so, is that general character good or bad?

7th. From that general character, would you give her full faith & credit on oath?

8th. If you know anything else of benefit to either of the parties to this suit, you will state the same in answer to these questions.

M'LAIN, HEAD & SONS, *Sol's.*

(Counsel for compl't, Ja's Bankhead, except to the taking of the foregoing depositions of Andrews, Potts, Hutchins, Allen, Bennett, Martin, McConnell, for the reasons—1st. Because the character of Gideon Gif-

ford or M'r's Prudence Gifford has not been impeached or brought into question, and testimony to sustain his character until it is attacked is inadmissible; 2nd. Because if this *this* proof is competent it should have been taken within three months after this cause was at issue, & it not having been done, it is inadmissible, and no good or legal reason is shown why this deposition was not taken within the three months; 3rd. Because there is no order of court to take this deposition.—SHACKELFORD & HELMS, *Att'ys for Bankhead.*

All exceptions filed to this deposition by the compl't Bankhead overruled and appealed to the judge of the circuit court of the U. S.)

E. R. CAMPBELL, *Clk.*

NOV. 3RD, 1873.

75 Cross-examination of Gideon Gifford, M'r's Prudence Gifford, M'r's M. Carpenter, W. H. Gifford, M'r's Bettie Duffer, Ja's A. Andrews, R. M. Potts, j'r, H. C. Ellis, Jno. Hutchins, Archie Allen, C. H. Bennett, B. L. Martin, and N. W. M'Connell, by J. J. Turner, sol. of Ja's R. DeBow, ex't'r of the DeBow Donoho lands.

Cross-examination of Gideon Gifford:

1st. Have you not remained in possession and enjoyment of all the property of every kind and description conveyed by you in trust to R. A. Bennett, and also to J. W. Head, as trustees, as well as that conveyed to your son, Jo. G. Gifford, from the time of said conveyance up to this time?

2nd. Did R. A. Bennet, trustee, J. W. Head, trustee, and Jo. G. Gifford, son, take possession of any part of the property conveyed by you to them; if so, what part & where?

3rd. Give the value of each article or thing conveyed to said parties, and what has become of the same. Have you not had the possession, control, and use of all the same, and have any of the said parties attempted to take possession of said property; if so, when & how?

4th. Did you not go into the possession of the Donoho farm in 1858, and have you not been in possession up to this time, and have you ever delivered or offered to deliver up the property possession of the Donoho heirs or DeBow ex't'r? If so, when and where?

5th. Did you not claim and hold said land as your own till 1865, when the war had ended, and when you were insolvent, and the land had greatly depreciated?

6th. Has not said land greatly depreciated in value, and also the improvements on the same? What did you give for said place for 1873?

7th. If you state that you have ever demanded a title bond & it has been refused, state the time and place and who was present.

8th. State what property you owned when you made the conveyance to your son, Jo. G., its value, and what amount of debts did you owe at that time.

9th. How did Jo. G. Gifford raise the money to pay you, and what did you do with it; and what your wife do with it when she received it; and did not Jo. G. take it back to Murfreesboro', where he lived, and where he had come from a few days before?

(The sol. *the sol.* for DeBow, executor, excepts to questions 7, 8, & 11, in the original examination of said witness, as these questions are not involved in the pleadings.)

J. J. TURNER, *Sol'r.*

Interrogatories to be answered by James A. Andrews and H. C. Ellis, each on cross-examination for Ja's R. DeBow, exec't'r.

Quest. 1st. State the character of Gideon Gifford has not suffered very much for several years as a man of truth, as a man of integrity, and as a man of good moral character.

2nd. Is he not a man who gets into fusses about nearly every transaction that he has?

3rd. Is he not a man who has a great many lawsuits and difficulties?

4th. Is he a man who is regarded as being strictly truthful,
76 and a man of high integrity in his business matters, or can his promises generally be relied upon?

5th. Did he not at one time run off with a strumpit or whore and leave his wife and children for some time? State if this is not his character, and if it has not greatly injured his character.

6th. Are there not many men in his neighborhood that stand much higher as to truth, integrity, and morals?

7th. State if his character for truth, integrity, and good morals have not been under a cloud for some years.

J. J. TURNER, *Sol.*

Int'r's to be propounded to R. M. Potts, j'r, Jno. Hutchins, Archie Allen, C. H. L. Bennett, B. S. Martin, and N. W. McConnell.

1st. State if you are acquainted with Ja's R. DeBow. If so, how long?

2nd. Are you or are you not acquainted with his character for good morals & intelligence; if so, is it good or bad?

3rd. Are you acquainted with his general character for truth and veracity? If so, state if it is good or bad.

4th. From that character, would you or not give him full faith & credit on his oath in a court of justice?

5th. Is he not now a justice of the peace in the Hartsville dist., and has he not been chairman of your co. court in the last few years?

6th. Has not Gideon Gifford the character of being a man who has a great many difficulties & fusses, and also a large number of lawsuits?

7th. Has he the reputation of being reliable in his business transactions, or when he promises anything?

8th. Is his character for truth & good morals very good, tolerably good, or medium? In this respect, state his status.

9th. Has not his character as a man of truth, integrity, and morals suffered a good deal in public estimation for the last few years?

10th. What is his general character as to having at one time abandoned his family and running off with a whore—a woman of bad reputation?

J. J. TURNER,
Sol. for DeBow, Ex't'r.

77 *Answers.*

In the dist. court of the U. S. for the middle dist. of Tennessee.

Depositions of Gideon Gifford. Jno. Hutchins, R. M. Potts, j'r, H. C. Ellis, Ja's A. Andrews, W. H. Gifford, Archie Allen, N. W. M'Connell, M'r's Prudence Gifford, C. H. L. Bennett, and B. S. Martin, taken upon int'r's before J. W. Johnston, com., at his office in Hartsville, Trousdale Co., Tenn., on the 12th, 13, & 14th days of May, 1873.

Said witness, Gideon Gifford, being duly sworn, gave the following answers to the int'r's filed:

Answer to interrogatory first: I think the original amount I owe W. S. Alexander was between $900 and $1,000. I was the administrator of my brother, E. P. G. Gifford, and his estate was indebted to Alexander, and I gave my note in satisfaction of said debt. No payment was made on the note given by me. I made a deed of trust to J. W. Head, trustee, to secure that debt to Alexander. I suppose the date was about the 18th Feb'y, 1867.

2nd. I bought the Donoho tract of land from Benj. S. Martin. I was to give 11,000 for it, and give Martin $400 in addition for his bargain, as he had given 11,000 for it with the understanding that J. R. DeBow was to make me a title when it was paid for, and a bond for title in a few days. I gave my notes to DeBow, instead of Martin. There was no contract nor memorandum of the sale in writing between me & DeBow. It was parol. There was no title bond given me; there never has been. DeBow promised at various times to make me a title bond, but never did it. On one occasion, when I met him, he asked me to let him see "that little title bond" which he had given me. I told him he had never given me a title bond, and he knew it. He remarked that he had, and I had forgotten it. I then asked him who wrote the bond and who were the witnesses to it; that we would go and see them and settle the matter. He replied with an oath that were no witnesses.

3rd. I have paid off two notes for the sum of $3,666.66 each, & about $275 on the 3rd & last note, making in all about $7,608.32. The first two notes were paid off about the time they were due, or in a short time afterwards. I have paid out about $80 for repairing the house a short time after I went into possession. I built a cistern that cost about $150; cleared some 20 or 25 acres of land. There was only about two-thirds of the place under fence when I went there. It has all been fenced since. I moved two cabins out of the yard and put them up out on the farm. I also moved an old barn that needed covering and repairing off of the place. I put up a new large barn on the place, which has since blown down. I have made some 8,000 rails and put them on the place, and recovered the house, which cost about $66. I put up a new plank fence in front of the house, across the yard, worth about $12.25. I think $240 would be a reasonable rent for the place since I have been in possession.

4th. I have never ratified said verbal sale of the land since it was made. There has been no writing about it. I have never had a title bond, but have often tried to get one. My understanding was that I was to have a title bond in a few days after I gave my notes.

5th. I do not know what the land was worth at the time the deed of trust in favor of W. S. Alexander was executed. I do not know what it was worth when the conveyance was made to Jos. Gifford, but it had decreased in value.

78 6th. Neither of the conveyances were made to hinder and delay creditors, nor in contemplation of bankruptcy. They were fair and bona fide, and I had no intention of applying for a discharge under the bankrupt act at the time. The conveyances were made for the purpose of paying debts, instead of defeating them.

7th. W'm Bratton was my wife's father, and she got some property when we were first married, amounting to $200 or $300. In June, 1858, her father died, and a short time after his death she drew $7 or 800, and a year or two afterwards she drew more. The whole amount she received before the death of her mother was about $2,000 or $3,500. When her mother died, in 1862, she got a balance from the estate, making in all $2,933, as I now remember. The whole amount was in money that she received since her father's death. She got some stock & other things for housekeeping when we were married. The property came into my hands with the understanding that it was to go to pay for this Donoho tract of land, and that she was to have an interest in the land to the extent of her means.

8th. The money I received belonging to my wife was all invested in the Donoho land, which amounted to $2,933.

9th. Jo. G. Gifford was to give me $4,000, and all the debts included in the deeds of trust he was to pay, which was the consideration of the conveyance by me to him. The $4,000 was paid in money. He assumed the debts included in the deeds of trust.

10th. I cannot state the incumbrances on the property conveyed by me to Jo. G. Gifford; that is, the exact amount. I conveyed to him all the claims I had in the Donoho tract of land, and about 126 acres in my old tract of land, and some 12 or 14 acres bought by me from Thom. L. Winston, and ten acres bought from Alexander, and one-half of the mill and mill tract of land on Peyton's Creek, household furniture, &c.

11th. Jo. G. Gifford executed two notes to his mother, one for $3,500 and the other for $500, making $4,000, for money she let him have. She let him have the money that he paid me for the place. All the money was paid at the time of the trade. Jo. paid the money to me for the land, and my wife took it in the place of the money of her's that I had paid on the Donoho land, and let Jo. have it; for which he executed his notes, as above stated.

12th. I have occupied the Donoho land since the sale to Jo. G. Gifford. I have retained the property just as he bought it. I rented it.

13th. I do not think I was justly indebted to compl't, Bankhead, at the time I filed my petition in bankruptcy. I drew some money from him on tobacco shipped to him, and I thought I had sent tobacco enough to him to pay it off.

14th. After I had filed a bill to have the sale rescinded, M. W. Barksdale, an att'y, offered me a paper, saying it was a title to the Donoho land, and I told him I would not have it.

Answers of Gideon Gifford to cross-interrogatories propounded by sol's for complainant

Ans. to cross-int. 1st. I have remained in possession of all the property conveyed, except such as died, with the exception of ab't two & a half acres of land sold by me under a power of att'y from Jo. G. Gifford to Randal Reese, worth about $175.

79 (The above answer excepted to by counsel for compl't.)

Ans. 2nd. There is a record in Gallatin and at Carthage, I think, that will show my indebtedness to W. S. Alexander. The deed of trust I think was registered at both places. I think I gave Alexander a

note for the amount, and I think he sued on the note and got a judgment at Carthage, Smith Co., circuit court.

3rd. I have not paid Alexander anything on said debt since I went into bankruptcy. The whole debt was owing at the time I went into bankruptcy, and is yet, so far as I know, unpaid.

4th. Anderson Bratton was the administrator of my wife's father, and I got a copy of his settlement and a copy of my father-in-law's will, which I gave to my sol., J. W. Head, to file in this cause, and I here refer to the same as a part of this deposition.

5th. There were no advancements charged for in the will against my wife that I now remember, but a copy of the will on file will show for itself how that is.

6th. I married Prudence Bratton, the daughter of W'm Bratton, on July 12th, 1832. Her father died about 1858. Her mother died in June, 1862. I claim that part of the money was paid in 1858 & '9—that is, most of it. I think my wife had seven children at that time living and five dead.

7th. The contract between me and my wife was parol until Jo. Gifford bought the Donoho land, and it was then reduced to writing. I have no contract but the notes of Jo. Gifford, which my wife holds, and I cannot file them, as they are not in my possession.

8th. All the funds willed to my wife by her father went into the Donoho land.

9th. I cannot tell fully. I have paid off several debts.

10th. I still have a portion of it. A portion of it died, and a portion has worn-out.

11th. His estate is not insolvent that I know of. He has not paid his mother anything on the land that I know of.

12th. I never received any copy of the interrogatories or any instructions thereto, except that I talked to my att'y in regard to taking the depositions.

Answers to cross-interrogatories propounded by Sol. J. J. Turner for DeBow, executor:

Ans. to cross-int. 1st. I have remained in possession of all the property except what has been disposed of as shown in my original examination, and such as died and worn-out.

2nd. I have rented all the property from Jo. G. Gifford ever since I made the conveyance, and was to pay him $400 per year for it. I have also had a power of att'y to settle up the business, and have done a great deal in settling it up, and I am holding on to the property with the expectation of being paid for my trouble out of the property.

3rd. I cannot give the value of each article or tell what has become of each article without taking a great deal of time to do so. I have held it, as heretofore stated.

4th. I offered to give up possession when I filed my bill for that purpose. I refused to take a paper from Barksdale which he said was a title to the land.

5th. I only held the land to get the amount of money I had paid on it.

80 I think the land has greatly depreciated in value. I gave my note for $595 for the rent of the place for this year. I did it to hold possession until I could get my money out of it I had paid on debts secured in the deed of trust.

7th. I demanded a title-bond when I gave my notes for the place, and it was promised me that it would be given me in a few days. B. S. Martin was present.

8th. I cannot now detail either the amount I owned or that I owed at that time.

9th. Jo. G. Gifford told me that he had a part of the money himself, and he borrowed the balance from the bank in Murfreesboro'. I do not know what became of it after I received it and paid it to my wife. I suppose she paid it to Joe and took his notes for it.

GIDEON GIFFORD.

Answers of John Hutchins to interrogatories filed:

JOHN HUTCHINGS, of lawful age, being duly sworn, says:

Answer to interrogatory 1st. I am 62 years of age; a farmer and a merchant.

2nd. I am acquainted with him, and have been for 40 years, I think.

3rd. I am acquainted with his general character for honesty and truth. It is good. I would give him full faith and credit on his oath from his general character. I am acquainted with M'r's Prudence Gifford, and have been for a number of years.

6th. I am acquainted with her general character as to honesty and truth. It is good. From her general character I would give her full faith and credit on her oath.

8th. I don't know anything, except Gifford, where he was said to have gone off with a woman, some 20 years ago, returned, and I have never heard anything of it since. I think I was security for Gifford on the note to Ja's S. Alexander.

Answers of John Hutchings to cross-interrogatories filed by J. J. Turner, solicitor for J. R. DeBow, executor:

Answer to 1st. I am acquainted with James R. DeBow, and have been for 30 years

2nd. I am acquainted with his character for good morals and intelligence, and it is good.

I am acquainted with his character for truth and veracity, and it is good.

4th. From his general I would give him full faith and credit on his oath in a court of justice.

5th. He has been a justice of the peace in the Hartsville district, and chairman of the county court of this county.

6th. I don't think Gideon A. Gifford a quarrelsome man. I think he has a good many lawsuits.

7th. He has the reputation for being reliable in his business transactions and promises.

8th. I do not know of his being an immoral man.

9th. I have heard some hard charges against him, but do not know them of my own knowledge.

10th. I have heard something of his running off with a woman of bad reputation, but do not know of my own knowledge.

JOHN HUTCHINS.

81 Answers of R. M. Potts, j'r, of lawful age, after being duly sworn.

1st. I am 25 years of age, and clerk of the circuit court of Trousdale County.

2nd. I am acquainted with Gideon Gifford, and have been all my life; that is, since I was old enough to know people.

3rd. I am acquainted with his general character for truth and honesty, and think it is good.

4th. From his general character I would give him full faith and credit on his oath.

5th. I am acquainted with M'r's Prudence Gifford. I have also known her all my life.

I am acquainted with her general character for truth and honesty, and her character is good to the best of my knowledge, information, and belief.

7th. From her general character I would give her full faith and credit on her oath.

8th. I do not know.

Answers of R. M. Potts, j'r, to cross-interrogatories filed by J. J. Turner, solicitor for DeBow:

1st. I am acquainted with James R. DeBow, and have known him all my life.

2nd. I am acquainted with his character for good morals and intelligence, and it is good.

3rd. I am acquainted with his general character for truth and veracity, and it is good.

4th. From his general character I would give him full faith and credit on his oath in a court of justice,

5th. He has been a justice of the peace in this district and chairman of the county court.

6th. I don't know that Gideon Gifford is a very quarrelsome man. He has a good many lawsuits.

7th. He has the reputation of being reliable in his business transactions.

8th. His general character for truth and good morals is good.

9th. I do not know of his general character having suffered much in the last few years.

10th. I never heard of his running off with a woman of bad reputation before.

ROBERT POTTS, J'R.

Answers of H. C. Ellis, of ——:

H. C. ELLIS, of lawful age, being first duly sworn, gave the following answers to interrogatories filed:

Answer to inter. 1st. I am about 52 years of age; a farmer by occupation.

2nd. I am acquainted with Gideon Gifford, and have known him for 28 or 30 years.

3rd. I suppose I am acquainted with his general character for honesty and truth. I think I have known men of worse and men of better character.

4th. From his general character I would give him full faith and credit on his oath.

5th. I am acquainted with M'r's Prudence Gifford, and have known her for 28 or 30 years.

6th. I suppose I am acquainted with her general character for
82 truth and honesty. As far as I know it is good.

7th. From her general character I would give her full faith and credit on her oath.

8th. I do not.

Answers of H. C. Ellis to cross-interrogatories filed by solicitors for James R. DeBow, executor:

Ans. to 1st. I cannot say that Gideon Gifford's character has suffered in the last few years.

2nd. I have known him to get into a good many difficulties with his neighbors, particularly where there was debt concerned.

3rd. He has had several lawsuits in the last few years. I don't know that he has had more than a great many other men.

4th. So far as I know he is a man to be regarded as truthful and of integrity.

5th. A good many years ago it was said that he went off with a woman, but I don't know of my knowledge what his object was.

6th. I suppose there are some men of better character in his neighborhood.

7th. I don't know that his character for truth and integrity & good morals has been under a cloud for several years.

H. C. ELLIS.

Answers of Ja's Andrews to int'r's filed:

JA'S A. ANDREWS, of lawful age, being sworn, gave the following ans. to int'r's filed:

1st. I am about 60 years of age, and a merchant.

2nd. I am acquainted with Gideon Gifford, and have known him for a long time.

3rd. I am acquainted with his general character for truth and honesty.

4th. I would give him full faith and credit on his oath.

5th. I am acquainted with M'r's Prudence Gifford, and have known her for many years.

6th. I am acquainted with her general character for truth and honesty. It is good.

7th. From that general character I would give her full faith & credit on her oath.

8th. I know nothing about the suit, really.

Answers of Ja's A. Andrews to cross-interrogatories filed by J. J. Turner, sol. for Ja's R. DeBow, executor:

Ans. to cross-int'r. 1st. I don't know whether the character of Gideon Gifford has suffered in the last few years or not.

2nd. M'r Gifford has a great many transactions & a good many difficulties, but I don't think he gets into difficulties nearly all of his transactions—not near all.

3rd. He has a good many lawsuits.

4th. I think M'r Gifford generally comes up to his promises in business transactions. He does not come up to all his promises about money matters.

5th. The report was that M'r Gifford went off with a woman about 20 years ago, and there was another report giving the reason of his
83 going off, which report was that he had taken her off to stop talk about it; but I do not know of my own knowledge anything about it.

6th. There are a good many men who stand higher than M'r Gifford, particularly in regard to their morals.

7th. I do not know how to answer this 7th question.

JA'S A. ANDREWS.

Answers of W'm Gifford to int'r's filed.

W'M H. GIFFORD, of lawful age, being duly sworn, says:

Ans. 1st. Gideon Gifford is my father, and Jo. G. Gifford was my brother.

2nd. My mother received money from her father's estate. I do not know what amount. I do not know which received it, father or mother. I think both received it, some of it; it was all going to my mother. I know that the money was to be laid out in land by an agreement between my father & mother, and the land was to belong to mother.

3rd. I do not know the amount of property conveyed by my father to R. A. Bennett, trustee, but there was a right smart of it.

4th. I cannot state what the cash value of the Donoho tract of land was on the 10th of June, 1867.

5th. I cannot state. He made some improvements, but I do not know how much.

6th. My mother has claimed an interest in the Donoho tract of land ever since her funds went into said lands. Until the sale to Jo. G. Gifford, father and brother Jo. recognized her claim as valid. I have heard them speak of the money and heard them say they were going to lay it out in a home for her, as she desired to change her home on account of her health.

7th. I don't know a great deal that will be of interest to either of the parties. I heard James R. DeBow say he intended giving my father a title bond, but he has never done it. This conversation occurred several years ago near my mill on Peyton's Creek, in Smith Co. He also said that he & my father had fallen out and he was very sorry of it. I am satisfied the two deeds of trust made by my father were valid. The sale to brother Jo. was also a bona fide sale. Part of the property sold by my father to my brother Joe was partnership property belonging to my father & myself, & I got $500 for my interest in a settlement with my brother Jo.

Answer of W'm Gifford to cross int'r's filed by Shackelford & Helms, sol's for comp't Bankhead.

Ans. to cross int'r 1st. My age is 40 years, and by occupation a miller. I do not know the date of my father's receiving money from grandfather's estate, nor do I know how much. I was present when my father and mother made an agreement in regard to investing the money in land. It was verbal and no written contract that I know of.

2nd. I saw him pay out some money on the land, as I thought. I do not know where he got it. I cannot remember the date. There was no one present but father, DeBow, & myself.

5th. I do not know who my father received the money for my mother from. He got it at different times.

4th. I have been possession of the mill all the time, and running it both before & since it was sold for my brother.

W. H. GIFFORD.

84 Answers of Archie Allen to interrogatories filed.

A. ALLEN, of lawful age, being duly sworn, says:

1st. I am 40 years of age and sheriff of Tousdale Co.

2nd. I am acquainted with Gideon Gifford. Have known him about 30 years.

3rd. I am acquainted with his general character for honesty & truth. It is good.

4th. I would from his general character give him full faith & credit on his oath.

5th. I am acquainted with M'r's Prudence Gifford, and have known her for about 30 years.

6th. I am acquainted with her general character for honesty & truth, and it is good.

7th. From her general character I would give her full faith and credit on her oath.

8th. I don't know that I know anything of advantage to either party in this suit. I understand that Gifford and DeBow fell out with each other, because Gifford claimed that DeBow had never given him a title-bond for the Donoho tract of land, and DeBow claimed that he had.

Answers of Archie Allen to int'r's filed by J. J. Turner, sol. for DeBow.

Ans. to cross-int'r 1st. I am acquainted with Ja's R. DeBow, and have known him for 25 or 30 years.

2nd. I am acquainted with his general character for good morals and intelligence, and it is very good.

3rd. I am acquainted with his general character for truth & veracity, & it is good.

4th. From his general character I would give him full faith and credit on his oath in a court of justice.

5th. He has been a justice of the peace of Tronsdale Co., and chairman of the co. court.

6th. M'r Gifford has lawsuits frequently. I don't know that he has a great many fusses.

7th. M'r Gifford is rather loose in his business, that is, rather negligent.

9th. I don't know that his character has suffered much in the last few years.

10th. He was once charged with leaving his family and going off with a woman. I don't know how true it was.

A. ALLAN.

Answers of N. W. McConnell to the interrogatories filed by the soljs for the def'ts in the case of Ja's Bankhead vs. J. G. Gifford et als., in the U. S. court for the middle dist. of Tennessee.

Said witness being duly sworn, deposes as follows, viz :

Ans. to 1st. I am 40 years old, & am a lawyer by profession.

2nd. I am acquainted with Gideon Gifford, and have known him since the fall of 1859i

3rd. I am acquainted with Gideon Gifford's general character. It is good.

4th. I would.

85 5th. I am acquainted with M'r's Prudence Gifford, and have known her since the fall of 1859.

6th. I am acquainted with her general character. It is good.

7th. I would.

8th. My information from both Gideon Gifford and Ja's R. DeBow is, that they fell out in the course of a conversation about whether there was a title-bond given for the land in controversy, or at any rate it was in relation to the title-bond. I know nothing more that I now recollect

Answers to cross-interrogatories filed by the sol. of Ja's R. DeBow.

1st. I do not think that M'r Gifford's character has suffered for sev

eral years on the score of truth, integrity, & morals. He is about holding his own in those matters, and I don't think there is any change since I first knew him some 14 years ago.

2nd. M'r Gifford is a positive, firm kind of a man, and is unyielding in the enforcement of what he thinks is right, and does not use much of what is called policy in his transactions, hence he has some fusses. But I can't say that it is about nearly every transaction that he has.

3rd. M'r Gifford has a good many lawsuits, and some difficulties. He trades and traffics in a great many kinds of things, & with all kinds of people; and is negligent in his business, and hence has lawsuits & difficulties.

4th. There is a sprinkling of the community who do not regard M'r Gifford as strictly truthful, nor a man of high integrity in his business matters, and who would not reply upon his promises. But I cannot say that this opinion is general nor participated in by a majority of the people. It grows out of his mode of doing business as stated in my answer to cross-intr. 3, which gets him into entanglements, & he is unable to meet his engagements. He is a very accommodating & indulgent man, and this sometimes prevents him from meeting his engagements.

5th. I have that about 20 years ago. M'r Gifford went off somewhere with a lewd woman and was gone a few weeks, and then returned. In what capacity he went I never understood, further than I have heard it hinted that his relations with her was not right. This occurred several years before I became acquainted with him. He has the character of an occasional indulgence in "the forbidden fruit." But not as a general habit, & while this taints his moral character to some extent, I do not think it affects his character for honesty and truth.

6th. There are some men who stand higher in morals. And there are some of a different mould of character who have no personal enemies, and who are more universally esteemed as men of truth and integrity. But as a man of truth and integrity, and of good moral character, with the exception stated in my answer to cross-inter. 5, M'r Gifford stands well with the generality of the community.

7th. No; except as modified in my answer to the preceding cross-interrogatory.

Answers to second cross-interrogatories filed by solicitor of James R. DeBow.

1st. I am acquainted with James R. Debow, and have been since the fall of 1859.

2nd. I am acquainted with his general character for truth and good morals and intelligence, and it is good.

3rd. I am acquainted with his character for truth, and it is good.

86 4th. I would.

5th. He is not now a justice of the peace, but was the chairman of the court, and went out of office the 1st of January, 1872.

6th. This I have answered in my answer to the first cross-inter.

7th, 8th, 9th, and 10th. I have answered all these interrogatories in my answer to first cross-interrogatory.

N. W. McCONNELL.

Answers of M'r's Prudence Gifford to interrogatories filed:

M'r's PRUDENCE GIFFORD, of lawful age, being duly sworn, says:

Answer to interrogatory 1st. Jo. G. Gifford was my son and Gideon Gifford is my husband.

2nd. I obtained some means from my father's estate. My father was named William Bratton. I received some money and some live-stock which my husband bought at the sale of my father, and I got the money instead of the stock; the money came into my own hands.

3rd. I received the money at different times. I think I received the most of it in 1859 and 1860. There was a verbal agreement between myself and husband that my money was to go into the Donoho tract of land. The contract was made about 1859, I think.

4th. My husband received my money in accordance with that agreement, and paid it for the land, and never used any of it in any other way that I know of.

5th. I hold a receipt against Jo. G. Gifford for $3,500. This receipt was for money I had in the land in controversy, which he bought.

6th. I have always claimed an interest in the Donoho tract of land since I made the agreement that my money was to go into it, and after I gave up the money for that purpose.

Answers of M'r's Prudence Gifford to cross-interrogatories filed by compl't's counsel.

Answer to first. I received the most of the money in 1859 and 1860. I do not remember the dates. I received it from Anderson Bratton, my brother, who was the administrator of my father. I did not hand it over to my husband immediately. It was only a few days after I had let him have the money until he used it in paying for the land.

2nd. There was no written contract about it.

3rd. There were five shares in the estate of my father. Three children and two dead who were represented by their children. I do not know what was the amount of the estate. My father lived and died in Macon County. A copy of the settlement of the executor or administrator is already on file in this cause. The above answer excepted to by compl't for the reason that the receipt itself is the best evidence.

4th. It was all received by me after my father's death. I do remember the exact date. It was received at different times.

5th. I did not see my husband pay out the money for the land.

6th. There was no receipt given me for my money which was paid on the Donoho land.

7th. I was married in 1832. I am 58 years of age. My father died in 1858. My son Jo. G. Gifford was born in April, 1837.

87 8th. I think he had no other property that amounted to anything.

9th. I have no notes, only a receipt for the money.

10th. I have not filed any claim against my son Jo's estate with the administrator Duffer. I don't know whether I will file it or not. I don't know whether my son Jo's estate will be sufficient to pay all his debts or not.

11th. We have spoken of it, but not with a view of knowing anything that would be proven.

12th. I do believe they believe there is a God, who will reward & punish according to our deserts.

PRUDENCE GIFFORD.

Answers of C. H. L. Bennett to interrogatories filed:

C. H. L. BENNETT, being of lawful age, being duly sworn, says:

1st. I am 26 years old, and a lawyer & a clerk of the Co. court of Trousdale Co.

2nd. I am, and have been all my life.

3rd. I am acquainted with his general character for honesty & truth, and it is good.

4th. I would.

5th. I am, and have known her for 4 or 5 years.

6th. I have never heard her character brought into question to any extent.

7th. I suppose I would.

8th. I do not.

Answers of C. H. L. Bennett to cross-int'r's filed by J. J. Turner, sol. for Debow.

Ans. to cross-int'r. 1st. I am, and have known him all my life.

2nd. I am acquainted with his general character for good morals and intelligence, and it is good. I regard him as a man of very fine natural mind.

3rd. I am acquainted with his general character for truth & integrity. It is good.

4th. I would give him full faith and credit, on his oath, in a court of justice.

5th. He has been a justice of the peace and chairman of the Co. court of his Co.

6th. He has the character of having a great many lawsuits.

7th. Yes; I suppose he has.

8th. I regard him as a truthful man, but as to his morals, they are only medium.

9th. I cannot say. I have not heard it brought into question that I remember.

10th. I never heard of his running off with a woman of bad reputation.

C. H. L. BENNETT.

Answers of B. S. Martin to int'r's filed:

B. S. MARTIN, of lawful age, being duly sworn, says:

Ans. to int'r. 1st. I am 55 years of age; am the register of Trousdale Co.

2nd. I am acquainted with Gideon Gifford; have been acquainted with him over 30 years.

3rd. I expect I am acquainted with his general character for honesty and truth. It is good.

88 4th. I would.

5th. My acquaintance with her is very slight, as I never visited the family much.

6th. I am not acquainted with her general character; have heard nothing against her.

7th. Do not know her general character.

8th. When I sold the Donoho land to Gifford, he, Gifford, stated to me that his wife had some money that she wanted to go into the land, but he did not state the amount. I don't know of anything else of interest to either party. If the executor of Donoho ever executed to Gifford a title-bond for the land I never knew it. I never got a title-bond.

Answers to cross-int'r's filed by J. J. Turner, sol. for DeBow, ex't'r:

Ans. to cross-int. 1st. I am, and have known him ever since he was a very small boy.

2nd. I am acquainted with his character for morals and intelligence, and it is good.

3rd. I am, and it is good.
4th. I would.
5th. He has been a justice of the peace & chairman of the Co. court of Trousdale Co.
I don't know in regard to his difficulties & fusses. He has quite a number of lawsuits.
7th. So far as I know, he has that reputation.
8th. Good average, I think, sir.
9th. Not to my knowledge.
10th. I know nothing of it.

R. S. MARTIN.

I, John W. Johnston, clerk & master of the chancery court of Trousdale Co., Tennessee, do testify that the foregoing depositions were taken before me, as stated in the caption, and reduced to writing by me, except the deposition of N. W. McConnell, which was written by the witness, in my presence, at my instance.

I do further certify that I am not interested in the cause, nor of kin or counsel to either of the parties, and that the witnesses were first duly sworn, and then examined, and when completed they were sealed up by me and put in the post-office at Hartsville, addressed to E. R. Campbell, clerk of the circuit court of the U. S., at Nashville, Tenn., without being out of my possession or altered after they were taken.
This 17th day of May, 1873.

J. W. JOHNSTON,
U. S. Court.

89 Depositions of W. C. Duffer, taken in the cases of E. F. Malloy, adm'st'r, vs. R. A. Bennett et als., and same vs. Ja's R. DeBow et als.

Int'r. 1st. State your name, age, residence, and occupation, and then state if Jo. G. Gifford, deceased, was not your son-in-law.
2nd. Was said Jo. G. Gifford ever associated with you in business of any kind; if so, what kind of business? When and where did he go into business with you, and what amount of capital did he put into the business with you? Was it his own capital, or was it borrowed? Was he an equal partner, or did he have less than an equal interest? If so, what was his interest? How long was he in business with you? What amount of business did the firm do each year, and what was the net profits of each member of the firm each year?
3rd. What is the condition of the estate of the said Jo. G. Gifford; solvent or insolvent? If solvent, how much is it worth, after all his debts are paid? If insolvent, has the insolvency ever been suggested either in the chancery or co. court? If so, on what day, month, and year? Who is his executor or administrator?
4th. Do you know anything of a note or debt which his mother claims to have against him for borrowed money, in the sum of about $4,000, which she claims to have loaned him about the year 18 , and while he was in business with you in Murfreesboro? If you know anything in regard to that transaction, please state all you know about it, from beginning to end, minutely.
5th. Has his mother, or any one else for her, ever presented her said debt or claim against the said Jo. G. Gifford to his adm'r or exec't'r for payment, or filed the same, according to law, with his said representative, and would the said adm'r or exec't'r pay it if presented; or accept

it as a just debt if allowed to be filed as a claim against his estate? If not, then why not? Please explain the whole matter fully.

6th. Who is defending these suits since the death of the said Jo. G. Gifford; you, individually, or the wife of the said Jo. G. Gifford, or his adm'r or exec'r, or all of them; and who is employing the at'y in these cases, and especially those employed since the death of the said Jo. G. Gifford? Is it his wife, or you, or Gideon Gifford, his father? Please tell how all this is, fully.

7th. Do you know, or can you set forth, any other matter or thing which be a benefit to the parties at issue in these causes, or either of them, or that be material to the subjects of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

SHACKELFORD & HELMS,
Sol's for Complainant.

Answer to int'r. 1st. My name is W'm C. Duffer. I am 56 years of age. My residence is Murfreesboro, Tenn. My occupation is merchandising. Jo. G. Gifford was my son-in-law.

2nd. Jo. G. Gifford was associated with me in the mercantile business at Murfreesboro, Tennessee. We commenced business together about the 3rd Jan'y, 1867. He put into our business about the sum of $2,461. So far as I know, it was his own capital. His interest in our business was one-third of the net profits. We continued in business until about the 23 May, 1872. I cannot say, as I have no means of knowing what amount of business our said firm did each year. We did a large
90 business and made good profits until we were burned out in April, 1869. I think that I and the firm lost by the fire about $10 or 12,000. After this, and until we dissolved our business, our profits were small.

3rd. The insolvency of the estate of Jo. G. Gifford has been suggested to the co. court of Rutherford Co., and was so suggested on or about the 3rd day of Dec., 1873. W. E. Duffer is his adm'r.

4th. I know very little, of my own knowledge, of any note or account held against the estate of Jo. G. Gifford by his mother for $4,000, or any other sum of borrowed money. I know that some time in the year 1867 the said Jo. G. Gifford borrowed of me some money. He got from the store of Duffer & Gifford some and from the Murfreesboro Savings Bank some more, making the amount he required; and he went with it, or declared, at least, his intention of so doing when he started, to Gallatin, Tennessee. In about three days he returned to Murfreesboro, Tenn., and refunded the money above mentioned. This is all I know of my own knowledge in regard to the transaction referred to in the question.

5th. I know nothing of any presentation by his mother, or of any one else for her, or any account or claim against the estate of said Jo. G. Gifford, nor of any filing of the same with his representative, and I cannot answer what his representative would do were such a claim presented by or for her.

6th. I do not know of my own knowledge who is defending this suit or suits, referred to in question 6th, against the estate of the said Jo. G. Gifford, dec'd, since his death. I have had nothing to do with the defence of said suit, and if the widow or adm'r of said dec'd has I know nothing about it, except that I have heard them ask C. A. Sheaves, an att'y of this place, to look after their interest in regard to this matter.

7th & 8th. I do not know anything futher that I can think of in re-

lation to the matter referred to that would be of benefit or advantage to the parties at issue in this cause, or either of them, or material to the subject, except what I have heard the parties say in regard thereto, as to which I can answer, if it is desired, or if it is proper for me to do so. And further deponent saith not.

W. C. DUFFER.

Sworn to and subscribed before me March 27, 1874.

N. B. BLACK, *C. & M.*

STATE OF TENNESSEE, *Co. of Rutherford:*

I, N. B. Black, C. & M. of the chancery court at Murfreesboro, for said co., do hereby certify that the foregoing deposition of W'm C. Duffer was taken before me at my office, as therein stated in the caption, in the presence of neither party to said cause, and the same was reduced to writing by me, and I certify I am not interested in the cause, nor of kin or counsel to either of the parties to said suit; that I will send up said deposition and put it in the post-office at Murfreesboro, without the same being out of my possession, or being altered or changed after being taken, directed to E. R. Campbell, clerk.

Witness my hand and seal of said court, at office in Murfreesboro, this March 27, 1874.

N. B. BLACK, *C. & M.*

91 United States bankrupt act, March 2.

FORM NO. 1.

Petition by debtor.

To the Hon. CONNALLY F. TRIGG,
Judge of the District Court of the United States for the Middle District of Tennessee:

The petition of Gideon Gifford, of the town of Hartsville, in the county of Sumner, and State of Tennessee, and district aforesaid, respectfully represents:

That he has resided for six months next immediately preceding the filing of this petition, at Hartsville, Sumner County, within said judicial district; that he owes debts exceeding the amount of three hundred dollars, and is unable to pay all of the same in full; that he is willing to surrender all his estate and effects for the benefit of his creditors, and desires to obtain the benefit of an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, and the amendments thereto.

That the schedule hereto annexed, marked "A," and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said act;

That the schedule hereto annexed, marked "B," and verified by your petitioner's oath, contains an accurate inventory of all his estate, both real and personal, assignable under the provisions of said act.

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said act; and that he may be decreed to have a certificate of discharge from all his debts, provable under the same.

GIDEON GIFFORD.

J. W. HEAD & SON.

Oath to foregoing petition.

THE UNITED STATES OF AMERICA,
Middle District of Tennessee, ss :

I, Gideon Gifford, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true, according to the best of my knowledge, information, and belief; and I do further make oath that I am a citizen of the United States of America, and that I will bear true faith and allegiance to the same.

GIDEON GIFFORD,
Petitioner.

Subscribed and sworn to before me this 28th day of Febr'y, A. D. 1868.

ALEX. S. BRADLEY,
Register.

92 *Petition by debtor.*

1. SCHEDULE A.

Statement of all creditors who are to be paid in full, or to whom priority is secured, according to the provisions of the 28th section of the act of Congress.

Order of paym't. Preferred claims.	Reference to ledger or voucher.	Names of creditors, their residences and occupations.	Amount. Dollars. Cents.	When and where contracted.	Nature and consideration of the claim, and whether contracted as partner or joint contractor, and with whom.
		None.			

GIDEON GIFFORD,
Petitioner.

93 *Petition by debtor.*

2. SCHEDULE A.

Creditors holding securities.

(Particulars of securities held, with dates of same, and when given to be stated with the names of the several creditors; and also, particulars concerning each debt, as required by the 11th section of the act, and whether contracted as copartner or joint contractor with any other person; and, if so, with whom.)

Reference to ledger or voucher.	Names and residences of creditors.	Description of debt and securities pledged.	When and where contracted.	Value of securities.	Amount of debt.
	T. M. P. Hall, near Hartsville, Tenn.	Secured by deed of trust.	1860, at Hartsville, in suit.	4,000 00	287 60
	Winslow Hart, Hartsville, Tenn.	Deed of trust executed on the day of 1860.	Date not recollected, subject to credits.	4,000 00	about 1,500 00
	R. A. Bennett, Gallatin, Tenn.	In same deed.	1866 & '7, subject to credits.	4,000 00	300 00
	John W. Head, Gallatin, Tenn.	In same deed which is on record in Gallatin, Tenn.	In various years in Sumner Co.	4,000 00	500 00
	Jos. G. Gifford, Murfreesboro, Tenn.	In same deed.	1861, subject to credits.	4,000 00	400 00
	W. S. Alexander, Dixon Springs, Tenn.	Conveyance to him of an interest in a fund to be derived from the Donoho land. The land was contracted for, but no contract in writing, and sale void, and some $7,000 had been paid, and the equity of petitioner in the fund conveyed to secure the debt. Deed on record.	1858, in Smith Co. The claim is subject to credits.	7,000 00	about 1,450 00

GIDEON GIFFORD,
Petitioner.

94 *Petition by debtor.*

3. SCHEDULE A.

Creditors whose claims are unsecured.

[When the name and residence (or either) of any drawer, maker, or holder of any bill or note, etc., are unknown, the fact must be stated, as also the name, residence, and occupation of the last holder known to the petitioner. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property; the nature of each debt and demand, whether founded on written security, obligation, contract, or otherwise, and also the time, cause, and consideration of such indebtedness in each case, and the place where such indebtedness accrued.]

Reference to ledger or voucher.	Names of creditors, their residences and occupations.	When and where contracted.	Amount.		Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., whether contracted as copartner or joint contractor; if so, with whom.
			Doll'a.	Cents.	
	A. J. Branhan, farmer, Castilian Springs, Sumner Co.	Hartsville, 1859....	96	61	Wheat or flour. Judgment in 1860, before T. W. Lesuer, J. P., W. H. Gifford, stayor.
	Jordan Carr, farmer, Hartsville, Sumner Co., Tenn.	Macon Co., 1862....	161	13	Borrowed money. Judg't by S. W. Lesuer, J. P., Oct. 14, 1866. W. T. Anderson partner & joint contractor, W. H. Gifford, stayor.
	J. C. Crenshaw, surviving partner, &c., Hartsville, Tenn., farmer.	Hartsville, 1862....	78	92	Corn, individual, in litigation in Sumner County court. Account, judgment by S. W. Lesuer, J. P.
	Daniel Kearly, Hartsville, Tenn., farmer.	Macon Co., 1862...	153	72	Borrowed money, note, W. P. Alexander, partner & joint contractor. Judg't before S. W. Lesuer, J. P., Jan. 6, 1866, T. L. Winston, stayor.
	W. T. Gregory, adm'r of Jerry Gaurman, Dixon Springs, Tenn., farmer.	Macon Co., 1861...	180	90	Horse, note, judg't before S. W. Lesuer, J. P., W. P. Alexander partner & joint contractor,
	W. T. Gregory, do.	Macon Co., 1861...	391	95	Mule colts, note, judgment by Lesuer, J. P. Individual.
	Jessie Woofe, Lafayette, Tenn.	Hartsville, 1860....	118	60	In Sumner Co. court by appeal.
	B. F. Andrews, Franklin, Tenn.	Hartsville, 1862....	20	82	Tuition, note, judg't by S. W. Lesuer, J. P., R. A. Butler endorser, Ap'l 13, 1867.
	R. S. Satterfield, Hartsville, Tenn., farmer.	Not known, Hartsville.	36	70	Consideration not known. Note, judg't by S. W. Lesuer, J. P., Ap'l 13, 1867, R. A. Bennett security.
	Same.	Hartsville, 1864....	36	30	Tobacco, note, judg't before S. W. Lesuer, J. P., Ap'l 13, 1867.
	J. H. Dickerson, farmer, Lebanon, Tenn.	Hartsville, 1868....	40	00	Hire of negro, note, judg't before S. W. Lesuer, J. P., Oct. 30, '67.
	Clinton Filson, Hartsville, Tenn., farmer.	Hartsville, 1867....	10	00	Garnishment on debt due W. Harper before S. W. Lesuer, J. P., Feb'y, 1867.
	Charity Carr, farmer, Hartsville, Tenn.	Hartsville, 1867....	52	25	Borrowed money, note, security for J. P. Hallyburton, principal, judg't by J. D. Bennett, J. P., Dec. 14, 1869.
	Bennett & Stubblefield, merchants, Hartsville, Tenn.	Hartsville, 1867....	30	48	Goods, note, judgment May 5, 1860, by J. D. Bennett, J. P.
	John Reese, farmer, Hartsville, Tenn.	Hartsville, 1867....	77	00	Not known. Judg't 27 Dec. 1860, by J. D. Bennett, security, W. H. Gifford principal.
	John and S. C. Franklin, adm'rs of R. Franklin, Hartsville, Tenn., farmers.	Hartsville, 1858....	119	57	Sheep, note, judg't before E. T. Seay, J. P., security for W'm Gifford, Nov. 5, 1865.
	Same, as adm'rs of Moses Bunley, Hartsville, Tenn., farmers.	Hartsville, 1858....	113	56	Sheep, note, judg't before E. T. Seay, J. P., Nov. 25, 1865.
	Same, do.	do.	300		Mule, note, W. S. Yates joint contractor & partner.
	W'm Luster, Hartsville, Tenn., merchant.	Hartsville, 1861...	40	00	Groceries, note, individual.

Oath to foregoing petition.

THE UNITED STATES OF AMERICA,
Middle District of Tennessee, ss :

I, Gideon Gifford, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true, according to the best of my knowledge, information, and belief; and I do further make oath that I am a citizen of the United States of America, and that I will bear true faith and allegiance to the same.

GIDEON GIFFORD,
Petitioner.

Subscribed and sworn to before me this 28th day of Febr'y, A. D. 1868.

ALEX. S. BRADLEY,
Register.

92 *Petition by debtor.*

1. SCHEDULE A.

Statement of all creditors who are to be paid in full, or to whom priority is secured, according to the provisions of the 28th section of the act of Congress.

Order of paym't. Preferred claims.	Reference to ledger or voucher.	Names of creditors, their residences and occupations.	Amount. Dollars. Cents.	When and where contracted.	Nature and consideration of the claim, and whether contracted as partner or joint contractor, and with whom.
		None.			

GIDEON GIFFORD,
Petitioner.

93 *Petition by debtor.*

2. SCHEDULE A.

Creditors holding securities.

(Particulars of securities held, with dates of same, and when given to be stated with the names of the several creditors; and also, particulars concerning each debt, as required by the 11th section of the act, and whether contracted as copartner or joint contractor with any other person; and, if so, with whom.)

Reference to ledger or voucher.	Names and residences of creditors.	Description of debt and securities pledged.	When and where contracted.	Value of securities.	Amount of debt.
	T. M. P. Hall, near Hartsville, Tenn.	Secured by deed of trust.	1860, at Hartsville, in suit.	4,000 00	287 60
	Winslow Hart, Hartsville, Tenn.	Deed of trust executed on the day of 1860.	Date not recollected, subject to credits.	4,000 00	about 1,500 00
	R. A. Bennett, Gallatin, Tenn.	In same deed.	1866 & '7, subject to credits.	4,000 00	300 00
	John W. Head, Gallatin, Tenn.	In same deed which is on record in Gallatin, Tenn.	In various years in Sumner Co.	4,000 00	500 00
	Jos. G. Gifford, Murfreesboro, Tenn.	In same deed.	1861, subject to credits.	4,000 00	400 00
	W. S. Alexander, Dixon Springs, Tenn.	Conveyance to him of an interest in a fund to be derived from the Donoho land. The land was contracted for, but no contract in writing, and sale void, and some $7,000 had been paid, and the equity of petitioner in the fund conveyed to secure the debt. Deed on record.	1858, in Smith Co. The claim is subject to credits.	7,000 00	about 1,450 00

GIDEON GIFFORD,
Petitioner.

94 *Petition by debtor.*

3. SCHEDULE A.

Creditors whose claims are unsecured.

[When the name and residence (or either) of any drawer, maker, or holder of any bill or note, etc., are unknown, the fact must be stated, as also the name, residence, and occupation of the last holder known to the petitioner. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property; the nature of each debt and demand, whether founded on written security, obligation, contract, or otherwise, and also the time, cause, and consideration of such indebtedness in each case, and the place where such indebtedness accrued.]

Reference to ledger or voucher.	Names of creditors, their residences and occupations.	When and where contracted.	Amount.		Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., whether contracted as copartner or joint contractor; if so, with whom.
			Doll's.	Cents.	
	A. J. Branhan, farmer, Castilian Springs, Sumner Co.	Hartsville, 1859....	96	61	Wheat or flour. Judgment in 1860, before T. W. Lesuer, J. P., W. H. Gifford, stayor.
	Jordan Carr, farmer, Hartsville, Sumner Co., Tenn.	Macon Co., 1862....	161	13	Borrowed money. Judg't by S. W. Lesuer, J. P., Oct. 14, 1866. W. T. Anderson partner & joint contractor, W. H. Gifford, stayor.
	J. C. Crenshaw, surviving partner, &c., Hartsville, Tenn., farmer.	Hartsville, 1862....	78	92	Corn, individual, in litigation in Sumner County court. Account, judgment by S. W. Lesuer, J. P.
	Daniel Kearly, Hartsville, Tenn., farmer.	Macon Co., 1862...	153	72	Borrowed money, note, W. F. Alexander, partner & joint contractor. Judg't before S. W. Lesuer, J. P., Jan. 6, 1866, T. L. Winston, stayor.
	W. T. Gregory, adm'r of Jerry Gaurman, Dixon Springs, Tenn., farmer.	Macon Co., 1861...	180	90	Horse, note, judg't before S. W. Lesuer, J. P., W. F. Alexander partner & joint contractor,
	W. T. Gregory, do.	Macon Co., 1861...	391	95	Mule colts, note, judgment by Lesuer, J. P. Individual.
	Jessie Woofe, Lafayette, Tenn.	Hartsville, 1860....	118	60	In Sumner Co. court by appeal.
	B. F. Andrews, Franklin, Tenn.	Hartsville, 1862....	20	82	Tuition, note, judg't by S. W. Lesuer, J. P., E. A. Butler endorser, Ap'l 13, 1867.
	R. S. Satterfield, Hartsville, Tenn., farmer.	Not known, Hartsville.	36	70	Consideration not known. Note, judg't by S. W. Lesuer, J. P., Ap'l 13, 1867, R. A. Bennett security.
	Same.	Hartsville, 1864....	36	30	Tobacco, note, judg't before S. W. Lesuer, J. P., Ap'l 13, 1867.
	J. H. Dickerson, farmer, Lebanon, Tenn.	Hartsville, 1868....	40	00	Hire of negro, note, judg't before S. W. Lesuer, J. P., Oct. 30, '67.
	Clinton Filson, Hartsville, Tenn., farmer.	Hartsville, 1867....	10	00	Garnishment on debt due W. Harper before S. W. Lesuer, J. P., Feb'y, 1867.
	Charity Carr, farmer, Hartsville, Tenn.	Hartsville, 1867....	52	25	Borrowed money, note, security for J. P. Hallyburton, principal, judg't by J. D. Bennett, J. P., Dec. 14, 1860.
	Bennett & Stubblefield, merchants, Hartsville, Tenn.	Hartsville, 1867....	30	48	Goods, note, judgment May 5, 1860, by J. D. Bennett, J. P.
	John Reese, farmer, Hartsville, Tenn.	Hartsville, 1867....	77	00	Not known. Judg't 27 Dec. 1860, by J. D. Bennett, security, W. H. Gifford principal.
	John and S. C. Franklin, adm'rs of R. Franklin, Hartsville, Tenn., farmers.	Hartsville, 1858....	119	57	Sheep, note, judg't before E. T. Seay, J. P., security for W'm Gifford, Nov. 5, 1865.
	Same, as adm'rs of Moses Bunley, Hartsville, Tenn., farmers.	Hartsville, 1858....	113	56	Sheep, note, judg't before E. T. Seay, J. P., Nov. 25, 1865.
	Same, do.	do.	300		Mule, note, W. S. Yates joint contractor & partner.
	W'm Luster, Hartsville, Tenn., merchant.	Hartsville, 1861...	40	00	Groceries, note, individual.

Reference to ledger or voucher.	Names of creditors, their residences and occupations.	When and where contracted.	Amount. Doll's.	Cents.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., whether contracted as copartner or joint contractor; if so, with whom.
	C. L. Bennett, Hartsville, Tenn., merchant.	Hartsville, 1867....	30	00	Goods, acc't,, individual.
	J. W. Lock, Hartsville, Tenn., hotel-keeper.	"	80	00	Hire negro, note, "
	A. Hershberger, Hartsville, Tenn., merch't.	" 1865....	200	00	M'd'se ac., "
	A. C. Towers, Hartsville, Tenn,, merch't.	" 1860 or '61.	140	00	" " "
	A. C. Towers, adm'r of John Town, Hartsville, merchant.	" 1860....	50	00	" " "
	John W. Forgaser, adm'r of Dan'l, Smith Co., farmer.	Date not known, in Hartsville.	800	00	Note for negro hire & borrowed money; individual note, but may be a security to it.
	John Wharton, farmer, Dixon Springs, Tenn.	Smith Co., 1860 or 1861.	162	50	Joint note given by petitioner & W. S. Anderson for a horse.
	Robert Cate, Dixon Springs, Tenn.	1865, in Smith Co.	50	00	Damages about poles. Individual note.

96 *Petition by debtor.*

4. SCHEDULE A.

Liabilities on notes or bills, discounted, which ought to be paid by the drawers, makers, or acceptors.

(The dates of the notes or bills, and when due, with the names, residences, and business or occupation of the drawers, makers, or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the petitioner should be stated, and his business and place of residence. The same particulars as to notes or bills on which the petitioner is liable as indorser.)

Reference to ledger or voucher.	Names of creditors, their residences and occupations.	When and where contracted.	Amount. Dollars.	Cents.	Nature of liabilities; whether the same was contracted as copartner or joint contractor, or with any other person; and, if so, with whom.
	The president and directors of the Union Bank of Tennessee, Nashville, Tenn.	Hartsville ...	1,650	00	Note drawn by Merrill & Stalker, of Hartsville, payable to G. Gifford, payable at the Union Bank of Tennessee, dated Nov. 5, 1860. Suit brought on this claim, and is now pending in the circuit court of Sumner Co. (12 months after date.)
	Union Bank of Tennessee, Nashville, Tenn.	Nashville....	1,650	00	Note drawn by Averett & Stalker, payable to Gideon Gifford, dated 5 Nov., 1860, at Hartsville, due 24 months after date, for $1,650, payable by the Union Bank of Tenn., at Nashville, endorsed by petitioner.

GIDEON GIFFORD,
Petitioner

97 *Petition by debtor.*

5. SCHEDULE A.

Accommodation paper.

(N. B.—The dates of the notes or bills, and when due, with the names, residences, and business or occupation of the drawers, makers, or acceptors thereof, are to be set forth under the names of the holders. If the bankrupt be liable as drawer, maker, acceptor, or endorser thereof, it is to be stated accordingly. If the names of the holder are not known, the names of the last holder known to the petitioner should be stated, with his business and place of residence. The same particulars as to other commercial paper.)

Reference to ledger or voucher.	Names of holder, residence, and particulars of bills or notes.	Place where contracted.	Amount.		Whether liability was contracted as copartner or joint contractor, or with any other person; and if so, with whom.
			Dollars.	Cents.	
	None except such as are set out in Schedule A, No. 4.				

GIDEON GIFFORD,
Petitioner.

98 (United States bankrupt act, March 2, 1867.)

Oath to Schedule A.

UNITED STATES OF AMERICA,
Middle District of Tennessee, ss:

On this 28th day of February, A. D. 1868, before me personally came Gideon Gifford, the person mentioned in and who subscribed to the foregoing petition and schedule marked "A," respectively, and who being by me first duly sworn did declare the said schedule to be a statement of all his debts and liabilities in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

ALEX. S. BRADLEY,
Register.

99 *Petition by debtor.*

1. SCHEDULE B.

Interest in lands.

(Statement of all real and personal estate and effects whatever, which are now in the possession, enjoyment, or under the control of the petitioner, or which are held by any other person, in trust, for his use, or to the possession or enjoyment of which he is entited at the date of filing petition.)

Particular description of all real estate by petitioner, or held by him, and whether under contract or lease.	Encumbrances thereon, if any, and dates thereof.	Stetement of all other particulars relating thereto.	Estimated value.	
			Dollars.	Cents
Two hundred and seventy acres of land in Pulaski Co., Kentucky. Deed to petitioner.	There may be a balance of the purchase-money due for the land.	There are no other particulars; it is in two tracts.	500	00
Petitioner also entered 200 acres about 30 miles above the other land. County not known. No title & warrant. Acted as agent.	No encumberance except as explained.	No other particulars except that petitioner gave the money to Canard Werman to pay for entering the land.	200	00
None other except the land before conveyed by deed of trust.	The encumberances are before explained.	No other particulars.....	Value given before.	

GIDEON GIFFORD,
Petitioner.

100 *Petition by debtor.*

2. SCHEDULE B.

Personal property.

(The personal property of the petitioner will be set out in following order: A, cash on hand; B, bills of exchange, promissory notes, or securities of any description (each to be set out separately); C, stock in trade (specify the place and character of business and value of stock); D, household goods and furniture, household stores, wearing apparel and ornaments of the person; E, books, prints, and pictures; F, horses, cows, sheep, and other animals; G, carriages and other vehicles; H, farming stock and implements of husbandry; I, shipping and shares in vessels; K, machinery, fixtures, and apparatus used in business, with the place where each is situated; L, goods or personal property of any other description, with the place where each is situated.)

	Value.	
	Dollars.	Cents.
A. "Cash on hand."—None except the am't deposited.		
B. Bills of exchange, &c.:		
Judg't vs. W. C. Vance, before J. D. Bennett	24	31
" " Ja's Blackwell " "	108	00
" " C. R. Barton " "	40	56
" " T. L. Winston " Tho's Stalker	50	00
" " T. W. Thropp " S. W. Lessuer	28	81
" " W. J. Neeley, in circuit court at Gallatin, Tenn	300	00
Order on:		
C. Warmon	145	00
W. C. Vance, receipt for note	66	48
R. B. Allen, " "	45	47
B. M. Potts, note; he has a set-off	333	33
Tug Tickett, (collected)	15	00
C. L. Barton and Mary A. Barton	380	00
Rob't Mays	70	00
Stubblefield & Harris	29	00
J. D. Disleman, note	4	91
Charles McMurry "	15	00
Peter Averatt "	7	50
W. Stinson & C. L. Bennett, note	75	00
W. Gibson, "	66	60
A. B. Doncan, "	40	00
Lewis Allen, "	4	50
Jno. Sander, "	7	42
W. B. Harris, "	77	
C. Waiman, "	10	
J. A. McMurry, entitled to credits	174	96
C. McMurry	50	00
101 W. Dickins	5	00
P. Pinsley, note	16	00
Jno. Ivey, "	28	00
Jno. Hutchins, "	32	00
C. Waimon, order	7	00
W. C. Corman, deed, note	14	90
H. M. Neeley, order, of set	70	81
Nickson & Bennett	100	00
W. Ewing, note	5	00
" bal., credits, $105.00	101	00
Berry Rusk	10	00
W. A. Erwin	16	00
A. A. Whitesides; note, set-off	90	45
P. B. Alley	41	54
Note on Jacob Etter, due Gifford after allowing set-off; note originally for $203.00	90	00

There may be others not recollected, and which, if so, will be handed to the assignee.

I have transferred some claims to J. W. Head for his services as counsel in this cause.

GIDEON GIFFORD,
Petitioner.

102 *Petition by debtor.*

3. SCHEDULE B.

Choses in action.

(The petitioner will set them out in the following order: A, debts due petitioner on open account; B, stocks in incorporated companies, and interest in joint stock companies; C, policies of insurance; D, unliquidated claims of every nature, with their estimated value.)

	Value.	
	Dollars.	Cents.
Ennis Filson, a/c; set-off	81	85
W'm Parker, bal	10	00
Rob't Allen, bal	108	76
H. C. Ellis, most' covered by set-offs	1,263	00
E. H. Cannon, in court; covered mostly by set-off	1,134	98
James Buckingham	50	00
W. T. Andrews, to bal. due on horses sold him after credits of $225.00	430	00
W. T. Andrews, for one bay horse	140	00
W. C. Hart, corn sold him, (These accounts of Hart's to be credited on debt in deed of trust.)	300	00
W. C. Hart, plank sold him, (These accounts of Hart's to be credited on debt in deed of trust.)	20	00
Same, for cotton, (These accounts of Hart's to be credited on debt in deed of trust.)	59	00
Male Academy, for work done	80	00
D'r H. M. Neely, for cedar rails	20	00
William White, a/c	70	00
Jo. G. Geffo, dec'd, for bal. for mules	40	
James DeBow, one horse sold him	150	
Do., cash loaned him	30	
Jacob Elder, for horse & saddle	100	
Thomas Cayne, a/c	75	
John Wilson, a/c	143	90

There may be some a/c not recollected, which will be reported if any come to hand.

GIDEON GIFFORD,
Petitioner.

103 B. Stock in incorporated companies.—None.

C. Policies of insurance.—None.

D. Unliquidated claims, &c., &c.—None except as before stated, and suit in circuit court of Sumner Co. vs. J. A. Basterville, for damage for breach of contract about sale of wheat; also, sundry government claims on file in the proper office at Washington City, amounting to near 10,000.00. W. F. Andrews has an interest in part, and D. L. Goodall has an interest in others.

GIDEON GIFFORD,
Petitioner.

104 *Petition by debtor.*

4. SCHEDULE B.

Property in reversion, remainder, or expectancy, including property held in trust for the petitioner, or subject to any power or right to dispose of, or to charge.

(N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same as far as known to the petitioner.)

REAL ESTATE, &C.

Interest in land.—None except as referred to and reported.
Personal property.—None except as before reported.
Property in money, stocks, shares, &c.—None.
Rights & powers.—None.
Property heretofore conveyed for the benefit of creditors.—None except as herein set forth.
Portion of property conveyed for benefit of creditors, dates, deeds, &c., &c.—Conveyance made to J. G. Gifford, 10 July, 1867, for all my interest in the land where I now live. Also, my interest in the mill. I had heretofore made conveyance of said property by separate deeds to R. A. Bennett, trustee. The other made to W. Alexander, both of which are on record; date not recollected.

GIDEON GIFFORD,
Petitioner.

105 *Petition by debtor.*

5. SCHEDULE B.

A particular statement of the property claimed as excepted from the operation of said act, by the provisions of the 14th section thereof, giving each item of property and its valuation; and if any of it is real estate, its location, description, and present use.

(N. B.—The property claimed to be exempt under the laws of the State is to be described separately from the rest, and reference given to the statute of the State creating the exception.)

	Value.	
	Dollars.	Cents.
None except in the deed of trust.		
PROPERTY CLAIMED TO BE EXEMPT BY STATE LAWS, &C.		
2 beds, bedste'ds, & clothing for each	60	00
1 cow & calf	28	
1 doz. knives & forks	2	
1 doz. plates, dishes, 1 set tablespoons	3	50
1 set teaspoons		50
1 bread-tray		50
2 pitchers	1	25
1 waiter		75
1 coffee-pot		25
1 tea-pot		50

GIDEON GIFFORD,
Petitioner.

105½ *Petition by debtor.*

6. SCHEDULE B.

The following is a true list of all books, papers, deeds, and writings, relating to my trade, business, dealings, estate, and effects, or any part thereof, which, at the date of this petition, are in my possession, or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit, or advantage; and also of all others which have been heretofore at any time in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reasons for their custody of the same:

Books.—None except some school-books & others.
Deeds.—None.
Papers.—None.

GIDEON GIFFORD,
Petitioner.

106 (United States bankrupt act, March 2, 1867.)

Oath to Schedule B.

UNITED STATES OF AMERICA,
Middle District of Tennessee, ss:

On this 28 day of February, A. D. 1868, before me personally came Gideon Gifford, the person mentioned in and who subscribed to the foregoing petition and schedule, marked B, respectively, and who being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

ALEX. S. BRADLEY,
Register.

(Indorsed:) No. 703. United States bankrupt act, March 2, 1867. In the matter of Gideon Gifford, bankrupt. Filed in the office of the clerk of the middle district of Tennessee, this 29 day of Feb'ry, A. D. 1868, at 2 o'clock p. m. E. R. Campbell, clerk.

107 In the district court of the United States for the middle district of Tennessee. In bankruptcy.

In the matter of Gideon Gifford, bankrupt.

At Gallatin, Tennessee, in said district, on the 6th day of April, A. D. 1868, before A. S. Bradley, esq., register in bankruptcy.

MIDDLE DISTRICT OF TENNESSEE, *ss:*

MEMORANDUM.—This day adjudged said Gideon Gifford a bankrupt, as appears by the papers herewith returned.

A. S. BRADLEY,
Register in Bankruptcy.

(Indorsed:) United States bankrupt act, March 2d, 1867. Case No. 703. District court of the United States, middle district of Tennessee. In bankruptcy. In the matter of G. Gifford, bankrupt. A. S. Bradley,

register in bankruptcy, Nashville, Tenn. Filed April 9, 1868. E. R. Campbell, clerk.

108 In the district court of the United States for the middle district of Tennessee. In bankruptcy.

In the matter of G. Gifford, bankrupt.

At Gallatin, in said district, on the 10 day of April, A. D. 1868, before A. S. Bradley, esq., register in bankruptcy.

MIDDLE DISTRICT OF TENNESSEE, *ss:*

MEMORANDUM.—This day in the case of Gideon Gifford issued a warrant to the marshal of said district returnable to my office at Gallatin, Tennessee, May 6, 1868, at 10 a. m.

A. S. BRADLEY,
Register in Bankruptcy.

(Indorsed:) United States bankrupt act, March 2d, 1867. Case No. 703. District court of the United States, middle district of Tennessee In bankruptcy. In the matter of G. Gifford, bankrupt. A. S. Bradley, register in bankruptcy, Nashville, Tenn. Filed April 11, 1868. E. R. Campbell, clerk.

109 In the district court of the United States for the middle district of Tennessee. In bankruptcy.

In the matter of G. Gifford, bankrupt.

At Gallatin, in said district, on the 6th day of May, A. D. 1868, before A. S. Bradley, esq., register in bankruptcy.

MIDDLE DISTRICT OF TENNESSEE, *ss:*

MEMORANDUM. This day attended first meeting of creditors of said bankrupt at said Gallatin, when creditors failed to make choice of an assignee of said bankrupt's estate, and, there being no opposing interest, I appointed N. W. McConnell of Hartsville, Tennessee, assignee. Notified him. He accepted, and I assigned to said N. W. McConnell all of said bankrupt's estate, as appears by the papers herewith returned.

A. S. BRADLEY,
Register in Bankruptcy.

(Indorsed:) United States bankrupt act, March 2d, 1867. Case No. 703. District court of the United States, middle district of Tennessee. In bankruptcy. In the matter of G. Gifford, bankrupt. A. S. Bradley, register in bankruptcy, Nashville, Tenn. Filed May 7, 1868. E. R. Campbell, clerk.

110 In the district court of the United States for the middle district of Tennessee. In bankruptcy.

In the matter of G. Gifford, bankrupt.

At Nashville, in said district, on the 28 day of October, A. D. 1868, before A. S. Bradley, esq., register in bankruptcy.

MIDDLE DISTRICT OF TENNESSEE, *ss:*

MEMORANDUM.—This day, upon petition of said bankrupt for final discharge, ordered that a hearing be had on same, and second and third

meetings of creditors held at my office in the court-house in Gallatin, November 16, 1868, at 12½ o'clock p. m.

A. S. BRADLEY,
Register in Bankruptcy.

(Indorsed:) United States bankrupt act, March 2d, 1867. Case No. 703. District court of the United States, middle district of Tennessee, In bankruptcy. In the matter of G. Gifford, bankrupt. A. S. Bradley, register in bankruptcy, Nashville Tenn. Filed Oct. 29, 1868. E. R. Campbell, clerk.

111 In the district court of the United States for the middle district of Tennessee. In bankruptcy.

In the matter of G. Gifford, bankrupt.

At Gallatin, in said district, on the 16 day of November, A. D. 1868, before A. S. Bradley, esq., register in bankruptcy.

MIDDLE DISTRICT OF TENNESSEE, *ss:*

MEMORANDUM.—This day being the one for a hearing on the petition for final discharge of said bankrupt, and for the second and third meetings of creditors, I attended at the appointed time and place for said purpose, and there being no opposition I passed the last examination of said bankrupt, and made certificate required by rule of said court, also received and approved the report of the assignee, and filed all the papers relating to said cause in the clerk's office.

A. S. BRADLEY,
Register in Bankruptcy.

(Indorsed:) United States bankrupt act, March 2d, 1867. Case No. 703. District court of the United States, middle district of Tennessee. In bankruptcy. In the matter of G. Gifford, bankrupt. A. S. Bradley, register in bankruptcy, Nashville, Tenn. Filed Nov. 17, 1868. E. R. Campbell, clerk.

112 In the district court of the United States for the middle district of Tennessee. In bankruptcy.

In the matter of G. Gifford, bankrupt.

At Nashville, in said district, on the 9 day of March, 1870, before A. S Bradley, esq., register in bankruptcy.

MIDDLE DISTRICT OF TENNESSEE, *ss:*

MEMORANDUM.—This day said bankrupt appeared and filed amendment and affidavit excusing his delay in obtaining his discharge, and I made certificate and filed papers in the clerk's office.

A. S. BRADLEY,
Register in Bankruptcy.

(Indorsed:) United States bankrupt act, March 2d, 1867. Case No. 703. District court of the United States, middle district of Tennessee. In bankruptcy. In the matter of G. Gifford, bankrupt. A. S. Bradley, register in bankruptcy, Nashville, Tenn. Filed M'ch 12, 1870. E. R. Campbell, clerk.

113 UNITED STATES OF AMERICA:
District court of the United States, middle district of Tennessee.

Whereas Gideon Gifford, of Sumner County, Tennessee, has been duly adjudged a bankrupt under the act of Congress establishing a uniform system of bankruptcy throughout the United States, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by the court that said Gideon Gifford be forever discharged from all debts and claims which by said act are made provable against his estate, and which existed on the 28 day of February, 1868, on which day the petition for adjudication was filed by him, excepting such debts, if any, as are by said act excepted from the operation of a discharge in bankruptcy.

Given under my hand and the seal of the court at Nashville in said district this 9 day of Feb'ry, A. D. 1870.

{ SEAL OF U. S. DIST. COURT MID. DIST. OF TENN. } CONNALLY F. TRIGG, *Judge.*

(Indorsed:) No. 703. In the matter of bankruptcy of Gideon Gifford. Final discharge.

114 In the district court of the United States for the middle district of Tennessee. In bankruptcy.

In the matter of G. Gifford, bankrupt.

At Nashville in said district on the 13 day of June, 1871, before A. S. Bradley, register in bankruptcy.

MIDDLE DISTRICT OF TENNESSEE, *ss:*

MEMORANDUM.—This day, on petition of the bankrupt, ordered that the assignee do not deliver possession to James Bankhead, his agent or attorney, any property sold by said assignee to said Bankhead, or make any deed or conveyance of any such property to said Bankhead, until the matters alleged in said petition have been heard and adjudicated upon by the court, unless said Bankhead pays in cash to the assignee the amount of his bid.

A. S. BRADLEY,
Register in Bankruptcy.

(Indorsed:) United States bankrupt act, March 2d, 1867. Case No. 703. District court of the United States, middle district of Tennessee. In bankruptcy. In the matter of G. Gifford, bankrupt. John Ruhm, register in bankruptcy, Nashville, Tenn. Filed June 13, 1871. E. R. Campbell, clerk.

115 On the 19th day April, 1871, a petition was filed, which is as follows, viz:

In the district court of the United States for the middle district of Tennessee. In bankruptcy.

In the matter of Gideon Gifford, bankrupt.

To the honorable Connally F. Trigg, judge of the district court of the United States for the middle district of Tennessee, at Nashville:

Your petitioner, James Bankhead, one of the creditors and parties interested in the settlement of said bankrupt's estate, petitioning, respect-

fully represents unto your honor that said Gideon Gifford, bankrupt, filed his petition in bankruptcy on the 29th day of February, 1868, and that he was discharged on the 9th of March, 1870. That N. W. McConnell was appointed his assignee in bankruptcy on the 6th of May, 1868, and entered upon and took charge of said bankrupt's estate. That the choses in action returned by said bankrupt in his inventory of his effects and assets amount to some six thousand dollars, besides an unliquidated claim against the United States Government amounting to some nine or ten thousand dollars; also unencumbered realty valued by said bankrupt at some seven hundred dollars, as well as realty encumbered by deed of trust & mortgage valued at some eleven thousand dollars, with encumbrances thereon amounting to $4,000.

Your petitioner shows your honors that he is the only creditor that has proven his claim against said bankrupt's estate; that it amounts to some $4,500. That the said assignee has never made any return of the assets collected by him as such assignee, and your petitioner is informed and believes that he has collected a considerable amount of the choses in action, and that he has never made any report of the assets collected by him as such assignee, nor has he ever given any bond or security as assignee, and your petitioner is informed and believes that the assets are unsafe in his hands, that is the money so collected by him; no disposition or sale of the realty has ever been made by him, either of the encumbered or unencumbered, or of the choses in action, save those which he may have collected.

He further shows to your honor that under the provisions of the bankrupt law of 1867, sec. 29, page 82, of Brightley's Federal Digest of the U. S., of 1857 to 1869, he is advised that your honor can direct the time and place of the sale of the assets of said bankrupt. He now states for cause that if the assets are sold in the city of Nashville they will bring a much better price than if sold in the country among the friends of said bankrupt.

The said bankrupt and assignee live in Hartsville in the new county of Trousdale. And it is manifestly to the interest of your petitioner as sole creditor to have them sold in the city of Nashville, and asks that he may be allowed to bid the amount of his debt without paying the money to the assignee, as no other creditors have proved their debts, though there are a number set forth in the schedules. The costs in this cause he is informed have been paid, and he asks your honor to make such orders and decrees as may protect your petitioner if he should become the purchaser, &c.

To the end that justice may be done your petitioner he prays that the said N. W. McConnell may be compelled to make a return upon due notice given of the cost of said bankrupt that has been
116 collected by him as assignee, specifying the notes, and so forth, that has been collected by him and what disposition he has made of the balance of the assets of said bankrupt in the way of notes, judgments, acc'ts, &c. And that your honor will decree a sale of the said bankrupt's assets both personal and real, and also the equitable interest of said bankrupt in and to the mortgaged and encumbered realty as aforesaid at such time and place as may be reasonable upon due notice given according to law, and that your honor will permit your petitioner to bid to the amount of his debt without paying the money therefor, as he is the only creditor who has proven his claim; that the assignee be required to pay any and all moneys he may have collected out of the assets of said bankrupt into court upon making his return and report as

aforesaid, and to make all such orders and decrees as to your honor may seem meet in the premises, as he will ever pray. &c.

SHACKELFORD & HELMS,
Sol'rs for Bankhead.

James Bankhead makes oath that the statements contained in this petition are true to the best of his knowledge, information, and belief.

JAMES BANKHEAD.

Sworn to and subscribed before me this March the 14th, 1871.

A. S. BRADLEY,
Register.

On the 5th day of May, 1871, an order was entered, which is as follows:

In the matter of Gideon Gifford, bankrupt.

In this cause, on petition of James Bankhead, who appears by J. O. Shackelford, his attorney, it is ordered by the court that a rule be made on the assignee, N. W. McConnell, to appear and show cause, on or before Friday next, the 12th inst., 1871, why an attachment should not issue to compel him to make report of the assets received by him on account of the said bankrupt's estate and of his disbursements, and that he also appear and show cause why he should not be removed from said trust, and that a copy of this order be served on him.

On the 20th day of April, 1871, an order was entered, which is as follows:

In the matter of Gideon Gifford, bankrupt.

It appearing from the petition of James Bankhead, a creditor of said Gideon Gifford, who has proved his debt, that N. W. McConnell, who was appointed assignee of said bankrupt, has made no report of the assets, and the court being of the opinion that he is bound to make said report, it is therefore ordered by the court that said McConnell appear before the court on or before the 1st Monday in May next and make his report, or show cause why he has not made the same, and that a copy of this order be served upon him. In the mean time all questions arising upon said petition are reserved until the 1st Monday in May.

117 On the 28th day of April, 1871, the assignee filed a report, which is as follows:

The estate of Gideon Gifford in account with N. W. McConnell, assignee.

To balance cost		$72 96
To expenses to Washington to look after the gov'm't claims		75 00
To expenses to Nashville to pay balance of cost		2 20
		149 16

CREDIT.

By cash in Sumner County; jury ticket	$10 50	
By proceeds of sale of old carriage	20 00	
Amount collected of W. Ewing	20 00	
Balance in favor of assignee	98 66	
		149 16

I find that of the 275 acres of K'y lands reported by the bankrupt 115 acres were purchased of one John L. Heath, who claims a vendor's lien, and who holds claims against the bankrupt sufficient to set off the purchase-money. Said Heath still holds the legal title; the bankrupt only holds a half interest, as he bought the land in partnership with one C. Warman. The other 100 acres were purchased from said C. Warman, who has no title, and is unable to get one. Hence bankrupt can get no title. The 200 acres were not, in point of fact, entered. The land, if all paid for and title good, would be worth but little now, as the timber is pretty well cut off.

I desire an order to sell the bankrupt's interest in the said 275 acres at Hartsville. The reason I have made no final report and am unable to make one now is there is some suits pending to recover some assets, and are still pending in the circuit court of Trousdale County, and I have endeavored to collect the government claims, but have failed so far.

The notes, judgments, and accounts reported by bankrupt are quite worthless on account of insolvency and set off, and I have been unable to realize anything, except as set forth in the foregoing report, which shows a balance of $98.66 in my favor.

STATE OF TENNESSEE,
Sumner County:

This day personally appeared before me, J. R. Barry, clerk & master of said county, N. W. McConnell, who made oath that facts set forth in the foregoing report are true to the best of his knowledge, information, and belief.

N. W. McCONNELL.

Sworn to & subscribed before me this April 28th, 1871.

J. R. BARRY, *C. & M.*

On the 16th day of May, 1871, an affidavit was filed, which is as follows:

In the matter of Gideon Gifford, bankrupt.

James Bankhead, a creditor, who has proven his debt against the estate of said bankrupt, amounting to the sum of $4,500, states that N. W. McConnell, who was appointed assignee in this case, has given no security, as he is informed, and that he is a man of limited means; that the bankrupt returned assets of a large amount; that some of the notes and accounts, amounting to several hundred dollars, were good, and could have been collected, had due diligence, as he is informed and believes; that the said bankrupt returned, among other things, a claim against the U. S. amounting to several thousand dollars; that he also returned an equitable interest in several tracts of land, amounting to several thousand dollars; that the bankrupt, as he is informed
118 and believes, shortly before his petition in bankruptcy, conveyed the tract of land on which he now lives to his son, who immediately thereafter transferred the same to his mother; that this affiant is informed and believes that this said transfer was fraudulent and done to cover up his property, and to hinder and delay creditors in the collection of their debts; that the said assignee lives and has lived all the time in the immediate neighborhood of said bankrupt, and must have cognizant of all these facts.

Affiant states that, though three years have elapsed since his appointment as assignee, he has never made any report until the recent one under the orders of this court; that no effort has been made to settle the rights of the bankrupt with the real estate aforesaid.

Affiant further states that his interest in said bankrupt's estate, from the acts and doings of said assignee, are not safe in his hands, he having failed to make any effort to settle up the affairs of said bankrupt or to make his report as required by law. He therefore asks that he be removed, and that he deliver the assets over to the clerk of this court until the appointment of another assignee.

JAMES BANKHEAD.

Subscribed and sworn to before me this May 16, 1871.

E. R. CAMPBELL, *Clerk*,
By J. W. CAMPBELL, *D. C.*

On the 16th day of May, 1871, the answer of the assignee to the rule to show cause was filed, which is follows:

In the district court of the United States for the middle district of Tennessee. In bankruptcy.

In the matter of Gideon Gifford, bankrupt.

The answer of N. W. McConnell, assignee of the above-named bankrupt, to the petition of James Bankhead, asking for an order upon him to show cause why he should not be removed from his trust, &c.:

Respondent, answering, says that when said petitioner procured an order requiring him to file a report on or before the first Monday in May, 1871, in the above matter, he was engaged in the chancery court of Sumner County and could not attend in person, and the circuit court of Trousdale County, the place of respondent's residence, beginning on the said 1st Monday, he could not be here in person, but he made up the best report he could, in the absence of his books and papers, and sent it down by Charles Head, esq., an attorney of the Gallatin bar, together with a letter addressed to the clerk of this court explaining the reasons why he could not come, and stating that if necessary he would be here this week. This report was filed on the 28th April last.

On yesterday an order was served on respondent requiring him to be before this court on this the 16th instant to show cause, &c., why he should not be removed from his trust.

Respondent refers to his report herewith presented and made a part of this answer, as fully as if set forth in the words and figures, for the reasons why he has not settled up said estate.

Respondent is advised that he is not obliged to proceed with the settlement of his bankrupt's estate when he has no means in his
119 hands to defray his expenses; still respondent has done more than his duty, and has spent some $100 of his own means in endeavoring to collect the assets of said estate.

Respondent, further answering, says that it is his recollection that he executed a bond at the time he accepted the appointment of assignee, but if the bond is now lost he can and will make another, if required so to do.

Respondent, further answering, would show that the petitioner, James Bankhead, has proven some five thousand dollars against said bank-

rupt's estate. His claim against said bankrupt, as principal, amounts to only some $800 or $900, and this is in suit in the circuit court of Sumner County, the bankrupt alleging that in justice he owes him nothing. The remainder is a debt against R. Averett, with bankrupt as security, and this was also in suit at the time bankrupt filed his schedules, &c., in bankruptcy, but it has since been compromised, and the bankrupt released, he being only security, and R. Averett allowing judgment to go against him for some $1,700. Thus it appears it is yet doubtful whether said James Bankhead is a bona fide creditor or not of said bankrupt. Certainly, he is in no attitude to ask the removal of respondent, who has been guilty of no laches.

N. W. McCONNELL.

Subscribed and sworn to before me this May 16th, 1871.

E. R. CAMPBELL, *Clerk.*

On the 16th day of May, 1871, the report of the assignee was filed, which is as follows:

The estate of Gideon Gifford, a bankrupt, in account with N. W. McConnell, assignee.

To bal. costs	$92 96
To expenses incurred in presenting government claims	75 00
To expenses to Nashville to pay bal. cost	2 20
	$149 16

CREDIT.

By cash received on Sumner County jury ticket	$10 50	
By proceeds of sale of old carriage	20 00	
By amount collected of W'm Ewing	20 00	
Excess of disbursements over receipts	98 66	

REAL ESTATE.

The land mentioned in Schedule A as having been conveyed to secure certain creditors is in suit in the circuit court of Trousdale County. The bankrupt alleges that the purchase was in parol, but, having paid some $7,000 on the same, J. G. Gifford, to whom the bankrupt conveyed for $4,000 cash his equity, some nine months before filing his petition in bankruptcy, is asking to rescind the contract, and have the purchase-money repaid to him.

This equity of bankrupt, conveyed for the benefit of the preferred creditors, is the interest sold to Jo. G. Gifford, the said J. G. Gifford taking the same cum onere. In said conveyance to J. G. Gifford is bankrupt's interest in the Hartsville and Carthage turnpike, and also a mill in Smith County. This interest of the bankrupt in the foregoing property, whatever that may be, was conveyed for cash to said J. G. Gifford about nine months before filing petition. The bankrupt paid the cash thus received to his wife, under an alleged agreement to little more than that amount due her which he had received from her
120 father's estate, which he had used to purchase said land. J. G. Gifford paid the money directly to the wife of bankrupt, without its passing through his hands. As to the bona fides of this transaction between bankrupt and J. C. Gifford, I am fully satisfied. Hence the bankrupt did not have any interest in said land, turnpike, and mill when he filed his petition.

The 275 acres of land situated in Pulaski Co., K'y, I find as follows, viz: No deed was ever executed to bankrupt for any part of it. One hundred and seventy-five acres were purchased jointly by bankrupt and one C. Warman, from one Jno. L. Heath, who still holds the legal title, and claims a vendor's lien, and has other claims against the bankrupt and Warman, more than sufficient to absorb the entire tract. The other one hundred acres were purchased of C. Warman and paid for; but Warman has no title, and hence bankrupt has none; never had a deed. Bankrupt, at the time he filed his schedules, thought that his partner Warman had a deed for the 175 acre tract, but was mistaken. He also thought he had a deed for the 100 acres, but, upon examination, it was only a bond for title, and C. Warman entirely insolvent.

The 200 acres mentioned in the schedule as entered were, in point of fact, never entered. Bankrupt had given C. Warman some money, with directions to make the entry, and thought at the time of filing his petition that it had been done. This land is situated upon the Upper Cumberland, and is only valuable for its timber, which was nearly all taken off of it before bankruptcy. I have done nothing with said land except prosecute the investigation above detailed; the bankrupt's interest in said land exceeding $100, and it would be difficult to find a purchaser at this price.

The foregoing report shows the situation of all the real estate that the bankrupt has anything to do with.

CHOSES IN ACTION.

W. C. Vance, Ja's Blackwell, C. R. Barbear, T. L. Winston, F. W. Throp are worthless, because the def'ts are wholly insolvent, and Barbar and Throp bankrupts, without assets. The judgment mentioned as being against W. J. Neeley in the circuit court at Gallatin is only a suit against him for about that amount, which is still pending. The order on C. Warman has not been collected, because he is insolvent, and has set-offs. The notes for which Vance's and Allen's receipts were given have not been collected, for the same reason. R. M. Potts has set-offs; no settlement has been made; nothing received; the jury ticket cashed for $10.50. C. R. Barbear and Henry Barbear's note worthless, for insolvency; nothing collected. Robert Muyor, Stubblefield, and Harris, J. W. Duhman, Ch. M. Murray, Peter Averett, dead; W. Hinson, C. Burnett, W. Gibson, a bankrupt; A. B. Duncan, Lewis Allen, Jno. Sanders, W. B. Harris, C. Warman, J. A. Murray, W. Dickens, Rob't Pursley, a bankrupt; John Long, John Hotchkiss, j'r, W. H. Carman, dead, are all insolvent, some bankrupts, some dead, and nothing has been collected on these claims, and cannot be. H. M. Neeley has offsets; no settlement has been made, and nothing collected. Mason and Bennett insolvent. Collected $20 of the claim of W. Ewing by suit before J. P. Benj. Rush; W. A. Erwin, insolvent. Whitend, set-off, and no settlement made. R. B. Allen, the same. John Elder has more than enough to set-off bankrupt's claim.

ACCOUNTS.

One Ennis Felson, set-off; no settlement. W'm Parker, wholly insolvent. H. C. Ellis, solvent, but claims more than enough to offset bankrupt's claim; no settlement. E. H. Carman settled, and covered by set-off. James Buckingham and W. F. Anderson insolvent, and set-off; no settlement. W. C. Hart's claim is covered by set-off. H.

121 M. Neeley, as before stated, male academy, not collected. I have never got possession of this claim; think it probable that it was given to bankrupt's solicitor for his fee. Jo. Gilliam; no such person now in the county. Jos. DeBow; the horse was credit on the land above referred to, and also the cash. Thomas Gage; have not found him. J. P. Wilson is hopelessly insolvent.

There is a suit pending in the Trousdale County circuit court against Roper & Roper for some $100; also, in Sumner County court, against Baskerville, to recover some $150 worth of wheat. I have prepared these suits, and they are now ready for trial. I have not received nor disbursed a single dollar, except as set forth on the first page of this report. And in all cases where there are set-offs the parties claim enough to cover their entire indebtedness.

GOVERNMENT CLAIMS.

These amount to about $8,000. I have given to these claims a good deal of attention; have made a trip to Washington, at my own expense, to see the quartermaster who took the property and procure his voucher. They were rejected, on the grounds of disloyalty of bankrupt and want of sufficient proof of the taking. I obviated the latter by procuring the voucher of the officer who took it, and this I was unable to do until I saw him in person. I also obtained and filed additional proofs of loyalty; and the claims have not been acted upon since this was done. As to the probability of their ever being paid I cannot say. I have been hopeful of collecting them, and now regard them as the best assets I have belonging to Gifford's estate. There are three of these claims—one for horses, another for flour, and another for hogs.

The reason I have not settled up all the note accounts and judgments, or procured an order to sell them, is that they are almost entirely worthless, being the refuse of a pretty extensive business before the late war. I have no resource in my hands belonging to the bankrupt's estate with which to prosecute said settlement, and I was waiting to collect the claims on the government to get the means with which to do this. The same is true with regard to the lands in Pulaski County, K'y.

I have paid out $149.16, and received $50.50. I have with me all the notes, accounts, &c., that have come to my hands, and make them a part of this report, and mark by book and package Exhibits A and B, respectively.

In the district court of the United States for the middle district of Tennessee. In bankruptcy.

In the matter of Gideon Gifford.

On this 16th day of May, 1871, came N. W. McConnell, of Hartsville, in the county of Trousdale and State of Tennessee, and makes oath and says that he, the deponent, was on the day of , 1868, appointed assignee of the estate and effects of the above-named bankrupt, and as such he has conducted the settlement of the said estate; that the account hereto annexed, containing two sheets of paper, is true; and such account contains entries of every sum of money received by deponent on account of the estate and effects of the above-named bankrupt; that the payments purporting in such account to have been made by deponent have been so made by him; and he asks to be allowed for said payments, and for charges of settlement as set forth in said account.

N. W. McCONNEL .

Subscribed and sworn to before me 16th May, 1871.
E. R. CAMPBELL, *Clerk.*

122 On the 17th day of May, 1871, an ordered was entered, which is as follows:

In the matter of Gideon Gifford, bankrupt.

In the above matter, it appearing to the court that an order has been made upon N. W. McConnell, assignee of said bankrupt, to file a report in said matter; and it further appearing that said assignee did file a report on the 28th day of April, 1871, to which James Bankhead, an alleged creditor of said bankrupt, excepted, and which exception was sustained by the court; and it further appearing that a further order was made upon said assignee to appear in person and file a more complete report, and show cause why he should not be removed from said trust; and the said assignee having appeared in open court in person and presented a full report, and shown that he had been guilty of no fraud or laches—

It is therefore ordered that his report be filed, and that the rule to show cause why he should not be removed be discharged.

On the 16th day of May, 1871, a petition was filed, which is as follows:

In the district court of the United States for the middle district of Tennessee.

In the matter of Gideon Gifford, bankrupt.

To the honorable C. F. Trigg:

N. W. McConnell, assignee of the estate of said bankrupt, respectfully represents that a certain portion of said bankrupt's estate, to wit, the notes, judgments, and accounts described in the appropriate schedule of the papers in said matter, are almost entirely on insolvent parties, or covered by set-offs; that the land located in Pulaski County, K'y, is worth comparatively little, and the bankrupt has not fully paid for a portion of it, and has no title to any of it; and that it is impossible to tell when the government claims will be collected, if ever; and that there is no money in the hands of the assignee with which to defray the expenses in settling said estate; and that, according to the best judgment of your petitioner, it will be for the interest of the creditors of said estate that said property be sold. Therefore, he prays that he may be authorized to make sale of said property, subject to all set-offs and incumbrances, in the manner prescribed by the general order for the sale of unencumbered property, after giving notice for twenty days in the Hartsville Vidette.

N. W. McCONNELL.

Sworn to and subscribed before me this 16th day of May, 1871.
E. R. CAMPBELL, *Clerk.*

On the 17th day of May an order was entered, as follows:

In the district court of the United States for the middle district of Tennessee. In bankruptcy.

In the matter of Gideon Gifford.

In the above matter, it appearing to the court from the petition of N.

W. McConnell, assignee, that it would be to the interest of creditors to sell the assets to the highest bidder for cash, it is therefore ordered by the court that the said assignee sell said assets described in the petition, viz, all the interest of the bankrupt in the property conveyed to J. G. Gifford by said bankrupt, and all the interest of said bankrupt in all other property belonging to his estate, both real and personal, to the highest bidder, for cash, at the court-house door in Nashville, after giving twenty days notice in the Hartsville Vidette and 123 , Nashville, Tennessee.

On the 20th day of May, 1871, an order was entered as follows:

In the matter of Gideon Gifford, bankrupt.

In the cause it is ordered by the court that N. W. M'Connell, the assignee, give a bond with good security within a reasonable time in the sum of $1,000, conditioned as other assignees' bond, and that the clerk notify him of this order.

On the 24th of May, 1871, said assignee filed a bond, which is as follows:

In the matter of Gideon Gifford, bankrupt.

MIDDLE DIST. OF TENNESSEE, *ss*:

Know all men by these presents that we, N. W. M'Connell, of Hartsville, Tennessee, and Baxter Smith, of Nashville, Tenn., are held and firmly bound unto the U. S. of America in the just and full sum of $100, to the payment whereof well and truly to be made we bind ourselves and each of our heirs, executors, and administrators.

Signed, sealed, and delivered at Nashville, this 23rd of May, 1871.

The said N. W. M'Connell having been on the 6th day of May, 1871, by order of the dist. court of the U. S. for the middle dist. of Tenn., in bankruptcy, appointed assignee of the estate of Gideon Gifford, a bankrupt, this bond is executed pursuant to the 13th section of the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the U. S.," approved the 2nd , 1861, and is conditioned for the due and faithful discharge of all the debts by the said N. W. M'Connell, as such assignee, and in compliance with the orders and directions of the court in the matter of bankruptcy of said Gideon Gifford.

N. W. M'CONNELL. [SEAL.]
BAXTER SMITH. [SEAL.]

Approved on the 23rd day of May, A. D. 1871.

A. S. BRADLEY,
Register in Bankruptcy.

On the 13th day of June, 1871, the bankrupt filed a petition, which is as follows:

To the hon'l' C. F. Trigg, judge of the dist. court of the U. S. for the middle dist. of Tenn:

The petition of Gideon Gifford, a citizen of Trousdale, Tennessee, against Ja's Bankhead and N. W. M'Connell, the former of Davidson Co., the latter of Trousdale Co.

Your petitioner files this petition in behalf of the creditors of his es-

tate in bankruptcy, and himself as a petitioner in bankruptcy, alleging that Ja's Bankhead claims to be a creditor of said estate, and has filed his claim in this court, as petitioner is informed, amounting to $.

Petitioner would show that he does not owe said petitioner anything, and he has paid said pretended claims. Without any opportunity to petitioner to show the injustice of said pretended claim, petitioner would show that in 1858 or in 1859 he executed his note to said Bankhead for some 8 or 9 hundred dollars, and at this time petitioner insisted that he owed said Bankhead nothing, whereupon in the presence of witnesses Bankhead agreed that petitioner would give him his note for am't for which the note was given, that upon a final settlement between him and petitioner that he would correct all mistakes and allow petitioner all credits to which petitioner would be entitled. Upon the agreement petitioner gave said note, and since the execution of the note petitioner was unable to obtain a settlement out of said Bankhead.

124 Petitioner has filed his petition in bankruptcy in this court, and the property surrendered by order of this court has been ordered to be sold, and the defendant, McConnell, is the assignee, and has appointed this as the day of sale.

Petitioner would show that he shipped a large amount of tobacco to Bankhead before the war, and petitioner claims that Bankhead sold the tobacco for a much larger amount than was reported, and upon a settlement according to the true and correct amount of said sales he will owe said Bankhead nothing. Petitioner would show that Bankhead, before these proceedings in bankruptcy, has instituted suit in the circuit court of Sumner County, Tenn., upon said note, and that said petitioner was resisting the collection of the same, making as a defence the aforesaid grounds. After the filing of the petition in bankruptcy by petitioner, said Bankhead, without any order of said court, withdraws said note from the circuit court of Sumner County and filed the same in this court, and petitioner has had no notice of the filing of said claim until the last few days, and has not had an opportunity of showing or making his defence to the same.

Petitioner will show that said Bankhead is the on ly creditor who has filed his claim against his estate in this court, and that he is informed and so charges that said Bankhead intends to purchase the property to be sold by the assignee at his sale, and being the only creditor who has proven his debt will claim the right to be credited on his purchase by the amount of his debt as proven against petitioner's estate, and in that way will he avoid paying any money on his purchase.

Petitioner charges that said Bankhead is wholly insolvent, and that the assignee will turn over the assets to him if he should purchase the same, which petitioner is informed he will do, and Bankhead being insolvent will thus get the property in possession without paying the amount in money, but at the sale of the property petitioner is desirous of contesting said claim, and he will be able to show that Bankhead is entitled to nothing on the same.

He therefore asks leave to file this petition, with leave to contest said claim, and that Bankhead be notified of the same, and that proof be taken in reference to the same, and that the assignee be prohibited from making any assignment to Bankhead of the property in the event he purchases the same, unless he pays the amount bid in money, to be reported by the assignee to the court.

Petitioner is unable to state the precise amount for which Bankhead has filed or proven his claim, as the papers are not on file ,and he has had no opportunity of ascertaining the am't as filed by him, and he

asks that he be not precluded from making the defence to any claim he may have filed outside of said note. He asks for all other relief to which he may be entitled in the premises.

J. W. AND C. R. HEAD, *Att'ys.*

Gideon Gifford makes oath that the facts stated in the foregoing petition are true, to the best of his knowledge, information, and belief.

GIDEON GIFFORD.

Sworn to and subscribed before me this 13th day of Jan'y, 1871.

A. S. BRADLEY, *Reg'r.*

On the foregoing petition it is ordered, there being no opposing interest, that the assignee do not deliver possession to said Bankhead or his agent or att'y, of any property sold by him, said assignee, to said Bankhead, or make any deed of conveyance of any such property to said Bankhead until the matters alleged in this petition have been heard and adjudicated upon by the court, unless said Bankhead pays in cash to said assignee the am't of his bid.

A. S. BRADLEY,
Register.

125 On the 27th day of June, 1871, the answer of Bankhead to the foregoing petition was filed, which is as follows:

The answer of Ja's Bankhead to the petition of Gideon Gifford, filed on behalf of Gideon Gifford himself and his creditors in bankruptcy.

This respondent, for answer to so much of said petition as he is advised is material for him to answer, answers and says that on the 29th of Feb'y, 1868, the said Gideon Gifford filed his petition in your hon. court to be declared a bankrupt, and in his schedule, thereto annexed, he reported two am'ts due respondent, one for $5,000. This bill, drawn on Ja's Turner and payable to Ja's Bankhead, and endorsed by said respondent, and suit brought on same in Sumner Co. The other is $651.43 for money loaned, but which petitioner says in justice nothing due. He also reports in his schedule two notes of $1,650 each, due the Union Bank of Tennessee, and on a settlement between respondent and said bank the said bank for value received transferred these two notes of $1,650 each to respondent Then two notes and the amount of $500 and $651.43 are the amounts that constitute the claim of respondent as proven by him of $, in the bankrupt court against said Gifford, none of which have been paid or settled by said Gifford or any one for him.

Respondent admits, as charged in said petition, that he is the only one who has proven his claim against said Gifford, and which was done according to law. Respondent denies that he is a citizen of Davidson Co. or the State of Tennessee; he also denies any such transaction as detailed by petitioner in regard to giving respondent a note for some 8 or 9 hundred doll's; he denies that petitioner has ever asked for a settlement since the giving of said note of $500; respondent further denies most emphatically that he or his firm ever sold any tobacco or anything else for said Gifford or any one else that they did not cause full and correct returns according to the sales, and he therefore charges that this is every word a falsehood; he further denies that he is insolvent, and says that the firm of which he is serving partner does not owe any one anything; he therefore charges this allegation as false.

Respondent admits that petitioner has been discharged in bank-

ruptcy, and is advised therefore that said Gifford has no right to contest the claim after it has been proved for many months and a part of the record; and that he has no right to contest it for the creditors, as none others have availed themselves of the privilege of establishing their claims, and that under no circumstances is he the proper person to litigate for his creditors. Respondent also admits that N. W. M'Connell is the assignee, and that said M'Connell did as such assignee advertise said Gifford's assets according to law and the order of your hon. court, and on the 13th day of June, 1871, did sell the same at the court-house door in Nashville, and respondent, Ja's Bankhead, being the best and highest bidder, did purchase the same at the sum of $225, for which he paid the assignee the cash, a receipt for which he herewith files in the deed of conveyance of said assignee, marked "A."

Respondent is also advised that said Gifford is estopped from contesting or denying the claims of respondent as shown in petitioner's own schedule, and because he has made oath to them as to their correctness, and now cannot deny the same on oath or otherwise, as he has made his solemn admission of their correctness under oath.

And now your respondent, by way of demurrer to said petition, insists that the said Gifford is estopped by the record from denying the validity of respondent's claim against his estate; that all of respondent's claim, except the sum of $651.43, is admitted by said Gifford in his schedule to be owing, and he will not now be allowed, he having verified it under affidavit it is conclusive and binding upon him and oper-
126 ates by way of estoppel.

Therefore respondent prays that said petition be dismissed, he having paid the money to the assignee, and now having fully answered he prays to be dismissed with reasonable cost.

SHACKELFORD & HELMS,
Sol'rs for Respondent.

STATE OF TENNESSEE,
Davidson County:

This day personally appeared before me, A. S. Bradley, register in bankruptcy, James Bankhead, the petitioner in the within petition, who makes oath that the matters and facts therein stated as of his own knowledge are true, and those on information and belief he believes to be true.

JAMES BANKHEAD.

Subscribed and sworn to before me this 27th day of June, 1871.
A. S. BRADLEY,
Register.

Exhibit A to answer of Bankhead.

Know all men by these presents, that whereas the district court of the United States for the middle district of Tennessee did on the day of May, 1871, make an order that I, N. W. McConnell, of the town of Hartsville, as assignee of Gideon Gifford, a bankrupt, should sell the entire assets of said bankrupt to the highest bidder for cash, after giving the proper legal notice.

And whereas I have this day, in pursuance of said order and after giving said notice, sold said assets to James Bankhead, he being the highest and best bidder, for the sum of $225, which said Bankhead has paid to me in cash, the receipt whereof is hereby acknowledged:

Now, therefore, in consideration of the premises and said sum of $225.00, I do hereby convey to the said James Bankhead all the right, title, and interest that I have in and to the aforesaid bankrupt's assets, both real and personal, that may be in me by virtue of being such assignee; said real estate consists of 275 acres of land in Pulaski County, Kentucky, and any interest that said bankrupt may have in the tract of land upon which he now lives, situated in Trousdale County, Tennessee, and bounded on the north by the lands formerly owned by Gouldman Donoho, on the east by those of H. K. Patterson, on the south by those of W. Hart, and on the west by the lands of Sally Stalker and said W. Hart, containing about 200 acres. The personal estate consists of notes, accounts, and judgments, and claims against the United States Government, and for a more particular description of the same, reference is here made to the schedule of said bankrupt, on file in the office of the clerk of the United States district court for the middle district of Tennessee, but I make this conveyance simply as an assignee of said bankrupt, and not otherwise, this 13th of June, 1871.

N. W. McCONNELL,
Assignee in Bankruptcy of Gideon Gifford.

Attest:
E. F. MULLOY.
J. P. HELMS.

127 STATE OF TENNESSEE,
Davidson County:

Personally appeared before me, W. G. Ewin, cl'k of the county court of said co., E. F. Mulloy and J. P. Helms, subscribing witnesses to the attached deed, who, being first duly sworn, depose and say that they are personally acquainted with the above-named N. W. M'Connell, assignee in bankruptcy of Gideon Gifford, the bargainer, and that he acknowledged the same in their presence to be his act and deed for the purposes therein contained.

Witness my hand and seal of said court at office this 26th day of June, 1871.

W. G. EWIN, *Cl'k*,
By C. H. EASTMAN, *D. C.*

STATE OF TENNESSEE,
Davidson Co.:

REG'R'S OFFICE, *June 27th*, 1871.

I, B. F. Brinkley, reg'r for said co., do certify that the foregoing deed and certificate were received June 26th, 1871, at 1.52 o'clock p. m. and entered on page 248 of note-book No. 5, and registered to-day in book 45, pages 183 and 184, of my office.

B. F. BRINKLEY,
Co. Register.

On the 30th day of June, 1871, an order was made by the court on the petition of Gideon Gifford, which is as follows:

The petitioner having been discharged as a bankrupt and all of his estate being invested in the assignee, I do not perceive by what right petitioner interposes between creditors and the assignee.

It is therefore ordered that this petition be dismissed, and that petitioner and his securities, if any, pay the costs of the same. June 30th, 1871.

CONALLY F. TRIGG,
U. S. Dist. Judge.

On the 30th day of June, 1871, a petition was filed by Ja's Bankhead, which is as follows:

To the Hon. Conally F. Trigg, judge of the U. S. dist. court for the middle dist. of Tenn., at Nashville:

Your petitioner, Ja's Bankhead, a citizen of the State of New York, shows to your hon. that Gideon Gifford was declared a bankrupt under his petition filed on the 28th Feb'y, 1868, and that N. W. M'Connell, was appointed assignee of said bankrupt. The said Gifford was discharged in 1870. That he reports in his schedule various claims secured by deeds of trust and sales of property made to various parties.

He further shows to your hon. that under the orders and decrees of your hon. court at the April term, 1871, the said assignee M'Connell after having duly advertised according to law, proceeded to sell all the assets of said Gifford at the court-house door in the city of Nashville, including everything returned in his schedules; and your petitioner became the purchaser, he being the highest and best bidder, at and for the sum of $225, which he was compelled to pay in cash; and that the said assignee executed to him a deed of conveyance, which is here filed, marked "Exhibit A," and prayed to be taken as a part of this petition. Petitioner shows that no one besides himself has proved any claim against said bankrupt; that the assignee has said sum of $225 in his hands subject to the costs, it appearing from the records that all the costs have been paid save about $89, which the assignee claimed in his report as due him at the term of this honorable court. There has never been any settlement with said assignee, and your petitioner therefore prays that said assignee be compelled to pass his account
128 before the register; that a meeting of the creditors be called, and the fund distributed after deducting the bal. of cost, and, if necessary, your honor will decree a confirmation of the sale by said assignee to your petitioner, and to make such orders and decree as may be necessary and will expedite the cause, and to grant him all other and further relief as the equities of his case may demand, &c.

SHACKELFORD & HELMS,
Solicitors.

STATE OF TENNESSEE,
Davidson County:

This day personally appeared before me, A. S. Bradley, register in bankruptcy, James Bankhead, the petitioner in the foregoing petition, who makes oath that the matters and facts therein stated are true to the best of his knowledge, information, and belief.

JAMES BANKHEAD.

Subscribed and sworn to before me this 27th day of June, 1871.

A. S. BRADLEY,
Register.

Upon the back of said petition is the following endorsement:

I see no reason for making any order upon the assignee in the present stage of the proceedings. He will proceed as required under the law to settle and distribute the bankrupt's estate.

June 30th, 1871.

CONALLY F. TRIGG,
U. S. Dist. Judge.

UNITED STATES OF AMERICA,
Middle District of Tennessee:

I, Edward R. Campbell, clerk of the district court of the United States for the district aforesaid, do hereby certify that the foregoing is a true and perfect transcript of the record and proceedings had in said court in the matter of Gideon Gifford, of Sumner County, Tennessee, a bankrupt, as the same appears from the records on file in my office.

In testimony whereof I have hereunto set my hand and the seal of said court at office in Nashville in said district this 18th day of March, 1874.

E. R. CAMPBELL, *Clerk*,
By J. W. CAMPBELL, *D. C.*

129 On July 29, 1874, the depositions of W. Hart, Gideon Gifford and C. R. Head were taken in the account ordered herein.

WINSLOW HART, being sworn, states as follows:

Gideon Gifford is indebted to me as follows: A judgment obtained in the circuit court of Sumner for $1,014.01 on the 12th March, 1866. A transcript of said judgment is here filed and marked A. Fi.fa. issued on this said judgment and returned, and an alias execution issued on the 22 Feb'y, 1867, and was levied on the land mentioned in the deed of trust of a hundred or a hundred and 25 acres, and then held up by my consent, with the agreement of all parties interested that I was not to lose my lien of 12 months by holding up as aforesaid. This judgment is entitled to credits as follows: Pro rata paid by principal, E. P. G. Gifford's estate, on the 7th March, 1870, $154.13; on July 5th, 1870, $214.06. This is all that has been paid me on the judgment, and the estate of E. P. G. Gifford is entirely insolvent. So suggested, and the proceeds of the estate paid out under the orders of the chancery court, at Carthage, Smith Co., Tenn. This claim or balance of the judgment is justly due and owing and unpaid.

The note of $820 here filed, marked "Exhibit B." dated 1st Feb'y, 1858, signed by Gideon Gifford, W. F. Andrews, and R. A. Bennett, security, has never been paid, except the credit of $300 entered on the note at the date there stated, Dec. 25th, 1870. The balance of said note is still owing and due, and is the note given for borrowed money included in the trust deed.

Another note for $130, dated July 1st, 1855, and credited Jan'y 28th, 1861, is due and owing me, and was for an account marked "Exhibit C." Another note for $244.12, due Jan'y 1st, 1861, given for an account, which note was filed in the C. & M.'s office at Gallatin, under order of the court, &c. Also, an account not closed by note, marked "Exhibit D," which is just & true, and mentioned in said deed, and owing me, and these small notes were executed to me for accounts for work done for blacksmithing for different years, I owning 2 blacksmith-shops, and had a shop kept for many years in the town of Hartsville.

W. HART.

Subscribed & sworn to before me July 29th, 1874.

E. R. CAMPBELL, *Clk.*

Deposition of GIDEON GIFFORD, taken by consent of the parties:

Being interrogated, deposes and says that when the deed of trust above referred to was made by him, his impression and recollection was that he owed M'r Hart the two large notes and accounts for about $130

On the 30th day of June, 1871, a petition was filed by Ja's Bankhead, which is as follows:

To the Hon. Conally F. Trigg, judge of the U. S. dist. court for the middle dist. of Tenn., at Nashville:

Your petitioner, Ja's Bankhead, a citizen of the State of New York, shows to your hon. that Gideon Gifford was declared a bankrupt under his petition filed on the 28th Feb'y, 1868, and that N. W. M'Connell, was appointed assignee of said bankrupt. The said Gifford was discharged in 1870. That he reports in his schedule various claims secured by deeds of trust and sales of property made to various parties.

He further shows to your hon. that under the orders and decrees of your hon. court at the April term, 1871, the said assignee M'Connell after having duly advertised according to law, proceeded to sell all the assets of said Gifford at the court-house door in the city of Nashville, including everything returned in his schedules; and your petitioner became the purchaser, he being the highest and best bidder, at and for the sum of $225, which he was compelled to pay in cash; and that the said assignee executed to him a deed of conveyance, which is here filed, marked "Exhibit A," and prayed to be taken as a part of this petition. Petitioner shows that no one besides himself has proved any claim against said bankrupt; that the assignee has said sum of $225 in his hands subject to the costs, it appearing from the records that all the costs have been paid save about $89, which the assignee claimed in his report as due him at the term of this honorable court. There has never been any settlement with said assignee, and your petitioner therefore prays that said assignee be compelled to pass his account
128 before the register; that a meeting of the creditors be called, and the fund distributed after deducting the bal. of cost, and, if necessary, your honor will decree a confirmation of the sale by said assignee to your petitioner, and to make such orders and decree as may be necessary and will expedite the cause, and to grant him all other and further relief as the equities of his case may demand, &c.

SHACKELFORD & HELMS,
Solicitors.

STATE OF TENNESSEE,
Davidson County:

This day personally appeared before me, A. S. Bradley, register in bankruptcy, James Bankhead, the petitioner in the foregoing petition, who makes oath that the matters and facts therein stated are true to the best of his knowledge, information, and belief.

JAMES BANKHEAD.

Subscribed and sworn to before me this 27th day of June, 1871.

A. S. BRADLEY,
Register.

Upon the back of said petition is the following endorsement:

I see no reason for making any order upon the assignee in the present stage of the proceedings. He will proceed as required under the law to settle and distribute the bankrupt's estate.

June 30th, 1871.

CONALLY F. TRIGG,
U. S. Dist. Judge.

UNITED STATES OF AMERICA,
Middle District of Tennessee:

I, Edward R. Campbell, clerk of the district court of the United States for the district aforesaid, do hereby certify that the foregoing is a true and perfect transcript of the record and proceedings had in said court in the matter of Gideon Gifford, of Sumner County, Tennessee, a bankrupt, as the same appears from the records on file in my office.

In testimony whereof I have hereunto set my hand and the seal of said court at office in Nashville in said district this 18th day of March, 1874.

E. R. CAMPBELL, *Clerk*,
By J. W. CAMPBELL, *D. C.*

129 On July 29, 1874, the depositions of W. Hart, Gideon Gifford and C. R. Head were taken in the account ordered herein.

WINSLOW HART, being sworn, states as follows:

Gideon Gifford is indebted to me as follows: A judgment obtained in the circuit court of Sumner for $1,014.01 on the 12th March, 1866. A transcript of said judgment is here filed and marked A. Fi.fa. issued on this said judgment and returned, and an alias execution issued on the 22 Feb'y, 1867, and was levied on the land mentioned in the deed of trust of a hundred or a hundred and 25 acres, and then held up by my consent, with the agreement of all parties interested that I was not to lose my lien of 12 months by holding up as aforesaid. This judgment is entitled to credits as follows: Pro rata paid by principal, E. P. G. Gifford's estate, on the 7th March, 1870, $154.13; on July 5th, 1870, $214.06. This is all that has been paid me on the judgment, and the estate of E. P. G. Gifford is entirely insolvent. So suggested, and the proceeds of the estate paid out under the orders of the chancery court, at Carthage, Smith Co., Tenn. This claim or balance of the judgment is justly due and owing and unpaid.

The note of $820 here filed, marked "Exhibit B." dated 1st Feb'y, 1858, signed by Gideon Gifford, W. F. Andrews, and R. A. Bennett, security, has never been paid, except the credit of $300 entered on the note at the date there stated, Dec. 25th, 1870. The balance of said note is still owing and due, and is the note given for borrowed money included in the trust deed.

Another note for $130, dated July 1st, 1855, and credited Jan'y 28th, 1861, is due and owing me, and was for an account marked "Exhibit C." Another note for $244.12, due Jan'y 1st, 1861, given for an account, which note was filed in the C. & M.'s office at Gallatin, under order of the court, &c. Also, an account not closed by note, marked "Exhibit D," which is just & true, and mentioned in said deed, and owing me, and these small notes were executed to me for accounts for work done for blacksmithing for different years, I owning 2 blacksmith-shops, and had a shop kept for many years in the town of Hartsville.

W. HART.

Subscribed & sworn to before me July 29th, 1874.

E. R. CAMPBELL, *Clk.*

Deposition of GIDEON GIFFORD, taken by consent of the parties:

Being interrogated, deposes and says that when the deed of trust above referred to was made by him, his impression and recollection was that he owed M'r Hart the two large notes and accounts for about $130

and $244, and it was so stated in said deed of trust; but since then he has seen M'r Hart, and is convinced that he was mistaken about there being accounts, and now states that said accounts were closed by note before the making of the deed of trust.

In reference to debt due R. A. Bennett, the deponent says that said Bennett performed the services, but what would be a reasonable fee he does not know, as mentioned in said Bennett's deposition & exhibits thereto with reference to said matter. On this debt I paid said Bennett in fencing I know at least 1,000 feet, worth about $2 a hundred, and Jo. Gifford gave me a note on Ja's D. Bennett for $283 to hand over to R. A. Bennett to pay first a debt due from Jo. Gifford to the estate of Ja's D. Bennett of $108, and to appropriate the balance to the payment of my debt to said R. A. Bennett. The said note of $282 was given by J. D. Bennett for land bought of me about 1857 or 1858, due about 18 months after the sale, and then transferred by me to Jo. G. Gifford. I recollect nothing else being paid by me on the claim due said Bennett. It was my
130 impression that the difference between $282, the amount of said note and interest, and the $108, the amount due the estate of Ja's D. Bennett, to wit, $174, was to be credited as so much cash on the debt due R. A. Bennett; but I cannot state that said R. A. Bennett ever agreed to accept it thus.

GIDEON GIFFORD.

Subscribed & sworn to before me July 29th, 1874.

E. R. CAMPBELL, *Clk.*

Deponent further states that he paid to Winslow Hart the credit of $300 on Dec. 25, 1870, on his note $820.36, dated Feb'y 1st, '58. He also paid to said Hart the two last credits entered on the account, one dated May 1st, 1867, for $126.62, and the other dated May the 1st, 1868, for $102, all three of which credits were made since the execution of the said deed of trust.

GIDEON GIFFORD.

Sworn to & subscribed before me this 14th, 1874.

E. R. CAMPBELL, *Clk.*

C. R. HEAD, being called, deposes and says:

I am a practising att'y at Gallatin, Tennessee, and have been for nearly 8 years. I have examined the account filed as Exhibit A to R. A. Bennett's deposition in this cause for services as an att'y, and think all the items contained therein are reasonable and proper charges.

C. R. HEAD.

Sworn to and subscribed before me July, 1874.

E. R. CAMPBELL, *Clk.*

131 On the 14th day of April, 1875, the report of the clerk was filed, which is as follows, to wit:

E. F. MULLOY, ADM'R, &C.,
vs.
R. A. BENNETT ET ALS.

To the honorable the judges of the circuit court of the United States for the middle district of Tennessee:

The clerk and master, who was directed by a decree entered herein

on the 22nd day of May, 1874, revived at the last term, to take and state an account showing the amount due to the beneficiaries under the deed of trust executed on the 18th day of June, 1866, by Gideon Gifford to R. A. Bennett, trustee, and the amount of the fund in the chancery court at Carthage, in the case of the Hartsville and Carthage Turnpike Company, coming to the compl't under the purchase at the assignee's sale of the estate of Gideon Gifford, bankrupt, and the condition of the same, respectfully reports, that there is due to the beneficiaries under said deed of trust, respectively, as follows:

To John W. Head, balance of note and account, with interest calculated to the 1st day of April, 1875			$476 99
To R. A. Bennett:			
Note due Sept. 7, 1866		$150 00	
Interest to April 1, 1875		63 69	
Note due 1854, $29; credit, $8		21 00	
Interest to April 1, 1875, 20 years		25 20	
Account for 1865		75 00	
Int. from Jan'y 1, 1866		41 63	
Account for 1867		100 00	
Int. from Jan'y 1, 1868		103 20	
		$580 02	
Cr., no date given	$110 00		
Int. from date deed of trust	58 00		
		$168 02	
Due Bennett			$412 02
To the estate of Jo. G. Gifford:			
The amount paid by him to Jacob Eller, on note of Gideon Gifford, date not given		$550 00	
Int. from date of deed of trust	290 04	$840 04	
Due estate of Jo. G. Gifford			$840 04
To W. Hart:			
Judgment circuit court of Sumner Co., March 12, 1866, for		$1,014 01	
Int. on March 7, 1870		240 17	
		1,256 18	
Cr. 7 March, 1870		154 13	
		1,102 05	
Int. to July 6th, 1870		21 81	
Cr. July 6th, 1870		1,123 06	
		214 06	
		909 80	
Int. from July 6th, 1870		258 44	
		1,168 24	
Note due Feb. 2, 1858	$820 36		
Int. to Dec. 25, 1870	585 35		
	1,405 71		
Cr. Dec. 25, 1870	300 00		
	1,105 71		
Int. to April 1, 1875	265 14	$1,370 85	
Note due Jan'y 1, 1861	$244 12		
Int. to April 1, 1875	208 62	452 72	
Total due Hart April 1, 1875			2,991 89

132 RECAPITULATION.

Due estate of John W. Head	$476 99
Due estate of J. G. Gifford	840 04
Due R. A. Bennett	412 02
Due W. Hart	2,991 89
	4 720 94

T. M. P. Hall's debt mentioned in the deed of trust has been paid in full by Gideon Gifford since that time.

I therefore report that there is due to the beneficiaries under said deed of trust, on this day, the sum of $4,720.94.

The deed of trust describes the judgment in favor of W. Hart as for about $650 & cost, but the proof shows it to have been for $1,014.01, and in this report I have calculated it at the latter sum, it being the only judgment in favor of Hart against Gideon Gifford, and it being intended to secure the judgment.

The note filed by Hart due Feb. 2, 1858, for $820.36 is described in the deed of trust as a note for about $850. And I have my calculation upon the true amount as shown by the face of the note. Said Gifford also states in the deed of trust that he is indebted to said Hart by account for about the sum of $250, and which amount is intended to be secured by the deed, but the proof shows that the accounts referred to had been before that time, to wit, on Jan'y 1st, 1861, closed by the execution of a note by said Gifford to said Hart for $244.12, and I have calculated the amount of this note and interest in this report in lieu of the $250 stated to be due by account.

Said Hart has also proven three other accounts, as follows:

For blacksmithing for 1861			$145 43
Do.	do. 1862		168 45
Do.	do. 1863		35 35
With credits Jan. 1, 1865		$18 75	
Do.	May 1, 1867	126 62	
Do.	May 1, 1868	102 07	247 37

But in making the report I have not taken into consideration these last three accounts; they may just and due to said Hart by said Gifford, but they are not mentioned in or secured by the deed of trust.

In regard to the status of the fund in the chancery court at Carthage, Tennessee, in the case of the Hartsville and Carthage Turnpike Co., I respectfully report that a decree was rendered on Feb. 19th, 1872, in favor of Gifford against said company for $6,207.83. The clerk & master of said chancery court at Carthage has in his hands the sum of $2,500, and there is yet due from the purchasers of the turnpike $357. The cause is now before the clerk & master for a report of the amount due to each creditor, which report will be made to the August term, 1875, of the chancery court. The clerk and master thinks that the fund will pay 40 per cent. of the debts, and that if that amount is paid there will be coming to Gifford from said fund about the sum of $2,500, all of which is respectfully submitted this April 14th, 1875.

E. R. CAMPBELL, *C. & M.*,
By J. W. CAMPBELL,
D. C. & M.

133 On the 26th day of April, 1875, the complainant filed his exception to the report of the clerk, as follows:

The claimant comes and excepts to the report of the master made and filed in this cause on the 14th day of April, 1875, and for cause of exception says:

First. Because the master has reported a balance of note and acc't, with interest calculated to the 1st day of April, 1875, of $476.99, to John W. Head, when he is only secured in the deed of trust, Exhibit A to original bill, in the sum of $500, and Gideon Gifford in his deposition, on page 104, in answer to interrogatory 14 on page 93, says he paid Col. Head $450 or $500 on this debt, therefore complainant insists that the debt is paid, and it is error for the master to report otherwise, or at least to the amount he has.

Second. Because the master has reported a balance due R. A. Bennett on notes and account to the first of April, 1875, of $412.02, when he is only secured in said deed of trust in the sum of $300. And Gid. Gifford in his depo. on page 104, in answer to inter. No. 14 on page 93, says he paid R. A. Bennett about $300 on this debt, therefore it is error for the master to report the amount he has.

Third. Because the master in reporting the amount due Winslow Hart has computed a judgment of $4,014.01 in his favor from the circuit court of Sumner County, Tennessee, when the said trust deed only secured a judgment in the sum of $650, and has not allowed payments to the amount proven by Gid. Gifford in his depo. on page 104 in answer to inter. No. 14 on page 93, and the master has taken proof aliunde which varies the terms, stipulations, and amounts of and in the said trust deed, all which is error.

Fourth. Because the master has reported the amount of $840.04 as due Jo. G. Gifford when there is no proof to sustain this debt, only the mention of it in the deed of trust of a debt of $550, when all the transactions between Gid. Gifford and Jo. G. Gifford are declared fraudulent and void, by the final decree in this cause, and that at least cast such a suspicion upon this debt as to require proof of the same, and it is error to allow it.

All of the foregoing exceptions are taken, not to procrastinate or embarrass the cases, but that justice and equity may be done.

SHACKELFORD & HELMS,
Att'ys for Complainant.

134 On the 4th November, 1871, the following entry was made on the minutes of said court, to wit:

JA'S BANKHEAD
vs.
JO. G. GIFFORD ET ALS.

This day this cause came on to be heard, before the Hon. C. F Trigg, presiding, upon bill and demurrer; and upon argument and consideration the hon. court is pleased to overrule the demurrer in this cause, as it was not well taken, and the court doth therefore order, adjudge, and decree that the said demurrer be overruled, & that def'd'ts be compelled to answer the bill by the 4th Monday in Nov., 1871, and the court doth further order that def'd'ts be allowed to rely on the matters set up in the demurrer in their bill.

On the 21st day of May, 1872, the following order was entered upon the minutes:

JA'S BANKHEAD
vs.
JO. G. GIFFORD ET ALS.

In this cause, it appearing to the court that copies and subpœnas were issued and served upon R. A. Bennett, T. M. P. Hall, Winslow Hart, and W. H. Gifford, and that they put in their appearance, but have failed to answer the bill in this cause as required by law, it is therefore ordered, adjudged, and decreed by the court that the same be taken as confessed as to all of them, and set for hearing ex parte.

On the 19th July, 1872, the following entry was made on the minutes:

JA'S BANKHEAD
vs.
JO. G. GIFFORD ET ALS.

Be it remembered, that on this the 10th day of July, 1872, this cause was again called, the Hon. C. F. Trigg presiding, when the death of Jo. G. Gifford was suggested and admitted, and no administrator having been appointed on his said estates, and his widow and heirs being necessary parties to this suit, and it appearing to the satisfaction of the court that said Gifford left as his widow Lockie Gifford, and as his heir W'm D. Gifford, a minor, it is therefore ordered by the court that scire facias issue against the said widow & heir to appear and show cause why the said suit should not be revived against them; to which order the defendants except.

On the 25th day of July, 1872, the following entry was made on the minutes of said court:

JAMES BANKHEAD
vs.
JO. G. GIFFORD ET AL.

In this cause, upon application of the complain't, so much of the order made in this cause as directs scire facias against the widow and heir of Jo. G. Gifford, whose death was suggested and admitted, be vacated, set aside, and for nothing held, and complainant has leave to revive under the rule.

On the 13th day of November, 1872, the following order was made:

JAMES BANKHEAD
vs.
JO. G. GIFFORD ET ALS.

Be it remembered, that on this the 13th day of November, 1872, this cause was called, and it appearing to the satisfaction of the court that the bill of revivor has been regularly served, on the 17th day of August, 1872, upon W. D. Gifford, the infant child of Jo. G. Gifford, deceased; that said child is an infant of tender years, and that he has no regular

guardian; it is therefore ordered and decreed by the court that R. McP. Smith, an attorney of this court, be appointed guardian ad litem for said W'm D. Gifford the minor of said Jo. G. Gifford, and that he
135 answer as such guardian for such child.

It further appearing to the court that said bill of revivor was duly and regularly served upon M'r's Lockie Gifford, the widow of said Jo. G. Gifford, at the same time it was served upon the infant W'm D. Gifford, and that she has neither plead, answered, or demurred to the bill in this cause, it is therefore ordered, adjudged, and decreed by the court that the same be taken as confessed as against her, and set for hearing ex parte as to her.

On the 27th day of November, 1873, the following order was entered on the minutes:

E. F. MULLOY, ADM'R, &C.,
vs.
JO. G. GIFFORD ET ALS.

and

SAME
vs.
J. B. DEBOW ET ALS.

Be it remembered, that these causes came on to be heard on this the 27th day of November, 1873, before the Hon. H. H. Emmons, judge, &c., upon appeals from the rulings of the clerk upon all exceptions filed by the complainant to the depositions of the defendants, and the complainants, by leave of the court, withdrew all exception to all depositions heretofore taken upon the ground that the depositions were not taken within the three months heretofore allowed by order of the court for taken depositions, and thereupon, by consent of parties, extended the time for sixty days to both sides to take further proof in said causes.

These causes are thereupon continued until the next term.

On the 22nd day of May a final decree was rendered in this cause, which is in the following words and figures, to wit:

E. F. MULLOY, ADM'R, &C., OF JAMES BANKHEAD,
vs.
R. A. BENNETT ET ALS.

Be it remembered, that on this the 22nd day of May, 1874, as well as on a former day of the term, this cause came on to be heard before the Hon. Noah H. Swayne, associate justice of the Supreme Court of the United States, presiding as judge of the circuit court of the United States at Nashville, Tenn., upon the bill, answers, replication, and all the pleading and proof filed in the cause, and also all the proof in the case of E. F. Mulloy, adm'r, vs. J. R. DeBow et als., which was read by consent, and upon due consideration thereof the court is pleased to adjudge the sale and conveyance of the 10th of June, 1867, from Gideon Gifford to Jo. G. Gifford, fraudulent and void, and that all the personalty belonging to G. Gifford at the time of his bankruptcy passed and vested in his assignee, and that under the sale thereof by said assignee and the purchase by the c'mpl'ts vested him with all the rights of the

assignee; and that the deed of trust executed by Gideon Gifford to R. A. Bennett on the 18th June, 1866, is valid and binding, and that the beneficiaries therein secured are entitled to be paid out of the property thereby conveyed may be found due them upon their debts therein secured, after the cost of this cause is paid, and that the compl't is entitled to the surplus.

And the court doth further order, adjudge, and decree that the compl't may pay off the encumbrances upon said property, conveyed by said trustee if 18th June, 1866, as aforesaid, as may be found due the beneficiaries therein upon the taking of the report thereof hereinafter ordered and take all of said property, or the same may be sold upon the making and confirming of the report aforesaid for the payment of the
136 claims and debts, in the order hereinbefore stated.

And the court doth further adjudge and decree that the compl't is entitled to the funds arising from the Hartsville and Carthage turnpike, now in the hands of the clerk and the chancery court at Carthage, Tennessee, and which has been or may be decreed by said court to Gideon Gifford, or his assignee, and which fund is referred to in the pleadings, less the reasonable costs and expenses incurred in recovering the same; and by consent of parties the clerk of the chancery court at Carthage, Tennessee, may pay this said fund over to the clerk of the circuit court of the U. S. at Nashville, Tennessee, who may loan out the same upon government bonds as collaterals until the next term of the court, and that the compl't or his att'ys, Shackelford & Helms, are entitled to receive the same.

And the court is further pleased to order, adjudge, and decree that E. R. Campbell, the cl'k of the court, be appointed receiver in this cause, who will at once take charge of all the realty referred to in said deed of trust of June 18th, 1866, aforesaid, and which lands are described as follows:

One tract of land in Sumner Co., Tenn., dist. No. 1, part of tract extending over into Smith Co., containing about 150 acres more or less, and bounded on the north by the tract of land formerly owned by G. Donoho, on the east by the land of H. K. Patterson, on the south by the land of John Rice, and on the west by the lands of W. Hart and R. Averett.

One tract in same co. and dist. aforesaid, containing about 3 acres, bounded on the north by the lands of R. Averett, on the east by the lands formerly owned by G. Donoho, on the south by the same, on the west by the lands owned by W. Hart.

One tract in same co. and dist., containing about 18 or 20 acres, more or less, and bounded on the north by the lands of John Hutchings and others, on the east by the lands P. Duffy, on the south by the lands of G. Donoho's heirs, and on the west by the lands of R. Averett.

Also one tract of land in Smith Co., Tenn., in dist. No. 4, containing 65 acres, more or less, and bounded on the north by the lands of M'r's Felson, on the east by the lands of M'r's Puryear, on the south by the lands H. H. Haile, and on the west by M'r's Porter's houses, being one-half of the Somerset tract of land.

Also one tract of six and one-quarter acres of land in Smith Co., Tenn., in dist. No. , on Peyton's Creek, with mills and other appurtenances thereon, known as Gifford's Mills, a full description of which is found in a deed therefor from H. Sadler to Gideon Gifford.

And the said cl'k as such receiver will rent out all of said property to the best advantage until the first of Jan'y, 1875, and take notes therefor with good and solvent security, giving the present occupants a pref-

erence, and a writ of possession will issue to the U. S. marshal for the middle dist. of Tenn. to put the receiver in possession of said property if necessary, and said cl'k will make his report to the next term of this court how he has complied with this decree.

And the court is further pleased to order, adjudge, and decree that the cl'k of this court take & state an account in this cause, showing what amount is due each of the beneficiaries in said deed of trust aforesaid upon the claims therein secured to them after all just credits are allowed, and he will also report what is the amount of the fund at Carthage hereinbefore referred to, what the cost and expences with which it is chargeable amount to, and the condition thereof.

And it is further decreed by the court that Shackelford & Helms, att'ys for compl't, have a lien upon whatever fund may be recovered in this cause for their fees as such att'ys, and the cl'k will make his said reports hereinbefore ordered to the next term of this court, until the coming in of which reports all other questions not hereby settled are reserved.

137 On the 23rd day of Nov., 1874, a decree was rendered, which is in the words and figures following, to wit:

E. F. MULLOY, ADM'R, &C.,
vs.
R. A. BENNETT ET ALS.

Be it remembered that this cause was called, and by consent of parties it was agreed that the property known as the Carthage & Hartsville turnpike road, gates and gate houses, ferry and ferry houses, lands and privileges and franchises belonging thereto, which are to be sold by virtue of a decree in the chancery court of Smith Co., Tenn., on the 12th day of Dec., 1867, for cash; which decree was rendered in the cause of the Carthage and Hartsville Turnpike Co. against J. H. Smith, sheriff, and others, and the cases therein consolidated, it is agreed by and between the parties that E. R. Campbell, clerk of this court, buy said property by bidding the amount of the judgment or decree rendered in favor of Gideon Gifford, the bankrupt; and it is further agreed, in pursuance of the decrees rendered in this cause at the last term of the court, if the money should be paid into court at Carthage, that he receive the same and hold the same subject to the further orders of the court. If the property should be bought by the said Campbell, the same will be held for the benefit of the parties interested.

The accounts heretofore ordered in this cause not having been taken the orders are renewed, and the cl'k will rent out the lands as directed by the decree of last term for the ensuing year, & will make his report to the next term.

On the 8th Dec., 1874, decree was rendered in the words following, to wit:

E. F. MULLOY, ADM'R OF JA'S BANKHEAD, DEC'D,
versus
R. A. BENNETT ET ALS.

Be it remembered that this cause was called, and by consent of parties it is ordered and decreed by the court that the decree of the court rendered at this term in this cause be so modified as to authorize

E. R. Campbell, cl'k of the court, to buy said property, as directed to be sold by the chancery court at Carthage, at the lowest price, not to exceed the sum of $2,000 for the entire property advertised and ordered to be sold, and he will report as therein directed.

On the 10th Dec., 1874, the following order was made:

E. F. MULLOY, ADM'R, &C.,
vs.
R. A. BENNETT ET ALS.

The parties appeared by their sol's, and it is ordered by the court that the clerk loan to J. O. Shackelford & J. P. Helms, sol's for c'mp't, the sum of $250 each, out of the fund in this cause, when the said fund is paid into the hands of the clerk, upon their giving notes respectively with good and sufficient security.

It is further ordered that he loan to Ed. Mulloy, adm'r, &c., the sum of $250, upon like good security.

On the 29th day of Ap'l, 1875, a decree was rendered, which is in the words and figures, to wit:

E. F. MULLOY, ADM'R,
vs.
R. A. BENNETT ET ALS.

Be it remembered that this cause came on to be heard before the Hon. H. H. Emmons, judge, &c., on the 29th day of Ap'l, 1875,
138 upon a motion of the compl't to amend the prayer of the bill in this, that the real estate be sold on a credit free from the equity of redemption; which motion was sustained and the amendment so made.

Whereupon this cause came on further to be heard upon the report of the C. & M., filed in this cause on the 14th day of Ap'l, 1875, and the exceptions filed thereto by compl'ts Ap'l 26, 1875, numbered 1, 2, 3, & 4, and upon consideration the court is pleased to sustain the exceptions Nos. 2 & 3, and orders that the cl'k & M. recast the account as to the claims of R. A. Bennett and W. Hart, and that interest be calculated on Bennett's claim of $300, as secured in said trust-deed, from the date of said deed, and deducting therefrom the credits as shown by said report; that interest be computed on Hart's claim at $700, instead of $650, as secured in said trust-deed, from the 12th M'ch, 1866, deducting therefrom the credits as shown in said report; that comp't's exceptions Nos. 1 and 4 are not well taken and are over-ruled; and the C. & M. thereupon proceeding to recast the account as hereinbefore indicated, now reports that there is now due to R. A. Bennett $265.48, and to W. Hart the sum of $2,482.52, to Jo. G. Gifford, adm'r, the sum of $840.04, and to Jno. W. Head's adm'r the sum of $476.09; and the accou't as thus stat'd and recast being unexcepted to is in all things confirmed; and thereupon the court orders, adjudges, and decrees that the lands as described in the pleadings and decrees in this cause be sold upon a credit of 12, 18, & 24 months, except ten per c't cash, to pay cost and expenses, taking notes with good personal security and retaining a lien on the prop'rty for the payment of the purchase-money; and upon application of compl't and prayer therefor in the bill the property will be sold free from the equit' of redemption, and the tract of land described in

the trust-deed as the 150-acre tract near the town of Hartsville, Tenn., will be by the cl'k of this court, as special commissioner, devided into lots of not more than 30 acres, and he will have a platt of the sam' made by a competent surveyor, and he shall then sell each lot separately, and then sell the whole tract; and if the sale by lots br'ngs the larges' amount, then that mode shall be adopted, and vice versa; and the cl'k, as special com., shall advertise for four weeks before the day of sale, in a newspaper published in Hartsville, Tenn., and by hand-bills, giving the terms of sale, &c. The costs of this cause will be paid out of the funds arising from the sale of the said lands, and the cl'k, as com., will report his action as to how he has complied with the terms of this decree to the next term of this court.

On the 3rd day of May, 1875, a decree was rendered in said cause as follows:

E. F. MULLOY, ADM'R,
vs.
R. A. BENNETT, TRUSTEE, *et* ALS.

From the final decree entered in this cause on a former day of the present term of the court, the def'd'ts, W. H. Gifford, W. E. Duffer, adm'r of Jo. G. Gifford, dec'd, and W. D. Gifford, minor heir at law of Jo. G. Gifford, by his guardian ad litem, R. P. McP. Smith pray an appeal to the Supreme Court of the U. S., which is granted to them upon their executing bond with good and sufficient security in the sum of five hundred dollars, conditioned to prosecute their said appeal with effect or pay all such costs as may be adjudged against them in the premises.

139 *Appeal bond.*

Know all men by these presents, that we, W. H. Gifford, W. D. Gifford, and W. E. Duffer, administrator of Joseph G. Gifford, deceased, principals, and N. W. McConnell and Gideon Gifford, securities, are held and firmly bound unto E. F. Mulloy, administrator of James Bankhead, deceased, in the sum of five hundred dollars, to be paid to the said E. F. Mulloy, administrator of James Bankhead, deceased, his executors or administrators; to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this day of May, 1875.

Whereas the above-named W. H. Gifford, W. D. Gifford, and W. E. Duffer, administrator of Joseph G. Gifford, have taken an appeal to the Supreme Court of the United States, to reverse a decree rendered in the cause of E. F. Mulloy, administrator of James Bankhead, deceased, against R. A. Bennett, trustee, et als., by the circuit of the United States for the middle district of Tennessee:

Now, therefore, the condition of the above obligation is such, that if the above-named W. H. Gifford, W. D. Gifford, and W. E. Duffer, administrator of Joseph G. Gifford, deceased, shall prosicute their said appeal with effect and answer all costs. if they shall fail to make good their plea, then this obligation to be void; otherwise to remain in full force and effect.

GIDEON GIFFORD,
N. W. McCONNELL,
By A. McCLAIN,
Att'y in Fact.

Power of attorney.

Know all men by these presents that I, N. W. McConnell, of the county of Trousdale, and State of Tennessee, do hereby appoint A. McClain, of the city of Nashville, my attorney in fact, for me and in my room and stead to sign my name to the appeal bond as security in the case of James Bankhead against J. G. Gifford & others, in the circuit court of the United States. Said appeal is from the said circuit court to the Supreme Court of the United States.

And I hereby ratify said act when done in as full a manner as if I were present doing the same myself.

This May 5th, 1875.

N. W. McCONNELL.

140 UNITED STATES OF AMERICA,
Middle District of Tennessee, ss:

I, Edward R. Campbell, clerk of the circuit court of the United States for the middle district of Tennesse, do hereby certify that the foregoing is a true and perfect transcript of the record and proceedings had in said court in the cause of E. F. Mulloy, administrator of James Bankhead, deceased, against R. A. Bennett, trustee, et als., as the same appears from the records in my office.

In testimony whereof I have hereto set my hand and affixed the seal of our said court, at Nashville, this the 13 day of October, 1875.

[SEAL.] E. R. CAMPBELL, *Clerk*,
By J. W. CAMPBELL, *D. C.*

(Indorsement on cover:) No. 298. William H. Gifford, W. E. Duffey, adm'r of Joseph G. Gifford, dec'd, W. D. Gifford, minor, by his guardian ad litem, R. McP. Smith, appellants, vs. E. F. Mulloy, adm'r of James Bankhead, dec'd. M. Tennessee, C. C. U. S. Filed 30th October, 1875.

SUPREME COURT OF THE UNITED STATES,

No. 202.

WM. H. GIFFORD AND OTHERS

VS.

E. F. MULLOY, Administrator.

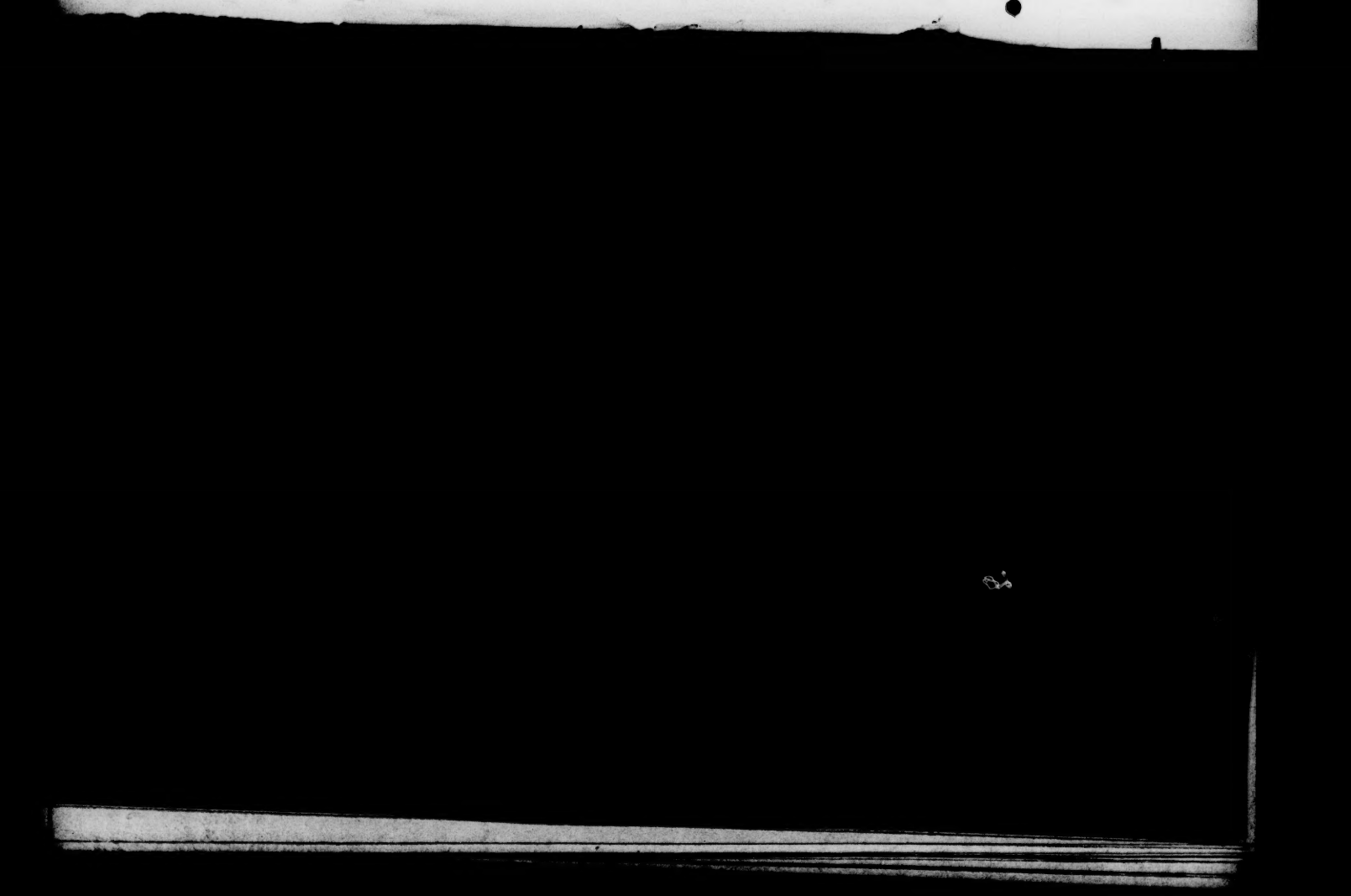
BRIEF AND ARGUMENT

OF

MONTGOMERY BLAIR & ANDREW McCLAIN

SOLICITORS FOR APPELLANTS.

L. C. Neville, Printer, Nashville, Tenn.



W. H. GIFFORD and Others vs. E. F. MULLOY, Adm'r.

STATEMENT.

On the 18th day of June, 1866, Gideon Gifford conveyed to Bennett, in trust, a number of tracts of land to secure creditors. This deed was registered in the Register's office of Sumner county on 18th June, 1866. [P. 8 and 9.

On 18th February, 1867, Gifford also conveyed to John W. Head in trust, whatever interest he had in another tract of land containing 200 acres. This deed was made to secure W. S. Alexander in the payment of a debt of $1460.30, and was registered in the Register's office of Sumner county on 28th of February, 1867. P. 9 and 10.] The interest of Gifford in this 200 acres was of this character, as appears on the face of the deed itself. He had made a *verbal* purchase of this land from Debow, Executor of Donohoo, and after having paid more than $7000 of the purchase money on this void purchase, he determined to pay no more, and to assert his lien on the land for the money which he had paid, and it was this equity he conveyed in trust to Head to secure Alexander.

It will also appear in this cause that about $2900 of this money paid on this land was the money of Prudence Gifford, the wife of Gideon Gifford, which money she derived from her father's estate, but which, by an agreement with her husband, was applied in payment for this land. This agreement between her and her husband was entered into while the money was in the hands of the executor

of her father, and before it was reduced to possession by the husband; and a part of this agreement was, that in taking title to the land, such an interest should be conveyed to her in her own separate right as should be proportionate to the amount of her money so invested.—[P. 15, 16, 55, 51, 81, 60, 61.

On the 10th of June, 1867, Gideon Gifford also conveyed to his son, Jo. G. Gifford, all of his equitable interest in the property conveyed in trust to Bennett and to Head just mentioned. He also conveyed in this deed of 10th June, 1867, to his son Jo. G. all his interest in the Carthage and Hartsville Turnpike. This turnpike interest had not been included in the deed to Bennett or to Head. This deed of 10th June, 1867, to Jo. G. Gifford was registered in the Register's office of Sumner county on 10th June, 1867. [P. 12.

The chief object of this conveyance to Jo. G. Gifford was to secure Prudence Gifford, the mother of Jo. G. and wife of Gideon, in the repayment to her of her money which had been paid on the Debow land purchase, Jo. G. becoming bound to her for that amount under the agreement.—[P. 15 and 16, and 73.

On the 28th February, 1868, Gideon Gifford filed his petition in the United States District Court for the Middle District of Tennessee praying to be adjudged a bankrupt, (p. 85 and 86) and on the 9th February, 1870, received his discharge. (p. 96.) On the 6th May, 1868, N. W. McConnell was appointed assignee, and conveyance was duly made to him of all the assets of the bankrupt.—[P. 94.

In his schedules of liabilities the bankrupt does not mention the name of Bankhead, the original complainant in this suit, who having died since its commencement, it is now prosecuted by an administrator. (The name of Bankhead nowhere appears in the bankrupt record.) In schedules 4, A he includes two notes on which he was indorser. One of which, it is mentioned, was in litigation in a State court. [P. 88.] Bankhead claims in his bill to have been the holder of these notes, and to have proved this debt

with some other liabilities not noticed in the schedules in bankruptcy, but no entry whatever of any description appears in the transcript of the record of the Bankrupt Court on file in this case showing any connection whatever of Bankhead with any debt against bankrupt. P. 85 to 111.] He charges in his bill that he is the only creditor who did prove a debt in the bankrupt proceedings. P. 4.] The only proof touching Bankhead's alleged debt which has been introduced in this suit, is his own deposition asserting it, and that of the bankrupt denying it. [P. 29, 73.

The assignee recognized these several conveyances to Bennett and to Head and to Jo. G. Gifford as valid conveyances, and hence did not regard the property therein conveyed as constituting any part of the assets of the bankrupt's estate.

Bankhead, the original complainant, undertook in the Bankrupt Court to have him removed because he did not disregard these conveyances and take possession of the property conveyed by them as assets of the bankrupt's estate. On the 16th May, 1871, he filed a petition praying that McConnell, the assignee, be removed. [P. 99 and 100.] To this petition the assignee filed his answer, and made a full report of the assets, and of the condition of the bankrupt's estate, (p. 100–1,) and in this report he made reference to the deed of 10th June, 1867, to Jo. G. Gifford, and expressly declared that he was fully satisfied as to the *bona fides* of this deed, *and that the bankrupt did not have any interest in the property conveyed by that deed when he filed his petition*, (p. 101,) and thus he disclaimed any and all interest in that property as assignee.

Upon the filing of this answer and report, the court ordered that the rule to show cause why he should not be removed be discharged and declaring that this report was full and that he had been guilty of no fraud or laches. [P. 104.

The answer and report of the assignee being thus approved, he filed a petition asking an order of sale of certain lands in Kentucky, and of certain assets specially mentioned. P. 104.] There-

upon an order of sale was made *of the assets described in this petition* of the assignee. [P. 105.

Now, the assignee did not ask for the sale of any property included in the deed to Jo. G. Gifford, and would have stultified himself to have done so, for he had expressly declared in his report filed on the same day, that the bankrupt had no interest in that property. But this order of sale, nevertheless, after restricting the property to be sold to the assets *described in the petition*, apparently by a forced construction of the draftsman, is made to extend to all the interest of the bankrupt in the property conveyed to Jo. G. Gifford, and all the interest of said bankrupt in all other property belonging to his estate both real and personal. [P. 105.

There does not appear in the transcript of the record of the Bankrupt Court to have been any report of a sale made by the assignee under this order, and all we know from the record as to what he did, is to be found in the conveyance made to the complainant, Bankhead, on 13th June, 1871. [P. 108-9.

From this conveyance it appears that the entire assets were bid off by Bankhead at $225, the sale being made *in solido*, and not in parcels as required by the 21st General Order in Bankruptcy. In his bill in this case Bankhead charges that this same property is worth $20,000 to $25,000. Now this conveyance of the assignee to Bankhead does not in terms, and cannot be made by any reasonable construction, to embrace any of the property sued for in the present suit. It was not intended by the assignee that it should embrace any of it. It does, it is true, in dubious terms, make mention of *any interest* the bankrupt *mag have* in the tract of land on which he lives, but in this suit no recovery is sought of any interest in that land. That is the tract on which the money was paid by the bankrupt on the verbal purchase from Debow, and bankrupt's interest in which was conveyed to Head, trustee. The property sued for in the present suit is the alleged interest of the bankrupt in the lands conveyed to Bennett, trustee, and the alleged

interest of the bankrupt in the Carthage and Hartsville Turnpike, all of which was conveyed to Jo. G. Gifford by the deed of June 10th, 1867.

Now, Bankhead having got this conveyance from the assignee of 13th June, 1871, filed two bills at the same time in the Circuit Court at Nashville. One of these bills was against Debow, executor, etc., and others in which he sought recovery of the alleged interest of bankrupt in the 200 acre tract on which the bankrupt had paid the money on the verbal purchase. In that bill he charged that the deeds to Head and to Jo. G. Gifford were fraudulent and void, and prayed that they be so declared.

The other bill was the one in the present suit. By this bill he seeks as we have before stated to recover the alleged interest of the bankrupt in the property conveyed by the bankrupt to Bennett, trustee, and also the alleged interest of the bankrupt in the Carthage and Hartsville Turnpike, and prays that the deed to Bennett, and also the deed to Jo. G. Gifford be declared fraudulent and void. [P. 5 and 6.

Neither the assignee or the bankrupt were made parties to either of these bills, and both bills were demurred to upon that ground. P. 13.

Among other grounds of demurrer, the record in the present case shows that the bill in this case was demurred to upon the following ground, also, viz:

Because complainant having proved his debt in the Bankrupt Court could not now be heard to charge that these deeds were fraudulent after the bankrupt had received his discharge without objection made on that ground by complainant or any other person. [P. 12.

The demurrer was overruled in both cases, with leave to rely on the demurrer in their answer, (p. 115,) and defendants answered, and proof was taken to be read, and was read in both cases on the hearing, both cases being heard at the same time.

The bill against Debow and others was dismissed on the ground as recited in the decree that the cause was barred by the statute of limitation of two years, ~~and also for want of jurisdiction~~. No appeal or writ of error was ever taken in that case.

In the present case the bill was retained, and the conveyance to Bennett sustained, and the conveyance to Jo. G. Gifford declared fraudulent and void, and the Carthage and Hartsville Turnpike fund and the equities of the bankrupt in the real estate mentioned in the trust deed made to Bennett adjudged to complainant.

The issues chiefly raised in the pleadings were:

1. As to whether Bankhead had, in point of fact, any debt against bankrupt.

2. Upon the charge of fraud in the deed to Jo. G. Gifford and to Bennett.

3. Upon the proceedings in bankruptcy involving the orders of the court and the acts and doings of the assignee in the management and sale of the assets.

Upon these points witnesses were examined, and a transcript of the record of the Bankrupt Court was filed.

The facts connected with the conveyances to Jo. G. Gifford upon which the charges of fraud made in the bill are predicated, are these:

Prudence Gifford, the wife of bankrupt, and the mother of Jo. G. Gifford, was the daughter of William Bratton, who died in 1858. P. 81.] He left a legacy to his daughter Prudence of about $2900. Gideon Gifford, her husband, about the time of the death of William Bratton, had in contemplation the purchase of the 200 acres of land. While this legacy of his wife *was in the hands of the executor, and before he made the purchase*, he entered into the following agreement with his wife: That she would permit the money to be derived from her father's estate to be invested in this land, and in taking title such interest should be conveyed to her as should be proportionate to the amount of her funds so invested. P. 15, 18, 55, 73, 81, 41.

The purchase was made, but no writing was executed by the vendor, Debow, to Gifford evidencing the sale, and after he had paid more than $7000, (the $2900 of the wife being a part of it), the trade was abandoned on the part of Gifford, and he determined to pay no more. The price agreed upon was $10,000. Consequently, including interest, largely more than $3000 was still unpaid. The war having intervened, the husband drifted with the masses into insolvency. In 1866 he made the deed of trust to Bennett, trustee. Debow alleged that he had made a bond for title, and was pressing collection of the unpaid balance of purchase money. Gifford denied that any bond or other writing had been given, and had commenced litigation, or was about commencing suit, to recover back what he had paid on the land. P. 41.] Land had greatly depreciated in value, and interest having accumulated during the war on the unpaid balance of purchase money, it was probable that if Debow should succeed in enforcing collection of this balance, it would require the whole of the 200 acres to pay it, and her husband being now insolvent, she became alarmed at the possibility of losing the whole of her legacy. Under these circumstances she sought legal advice, and the deed of 10th June, 1867, which is made the subject of the charges of fraud in the bill, was executed in pursuance of this legal advice, (p. 41), and was written by the eminent lawyer who advised it. [P. 41, 52.

This conveyance was a part of an arrangement between Jo. G. Gifford and his father and mother, entered into with the honest intention of saving to the old woman her money. The arrangement was that the son, Jo. G., would become responsible to her for her money, and assume the debts secured in the deeds of trust, and in consideration thereof the husband made this conveyance to Jo. G. of all interest in the 200 acres, and of all his interest in the lands embraced in the Bennett deed, and of all his interest in the Turnpike. P. 11.] But Jo. G. lived about 40 or 50 miles off, and it was not convenient or practicable for him to look after his inter-

est in person in the property conveyed, and hence a part of the arrangement was to give his father a power of attorney to take possession of the property to attend to the business for him, (p. 51) and his father was to pay rent, and he was to have credit on his rents for any payments he might make on the debts secured in either deed of trust, and if he should make payments to a larger amount than the rents, the son would be responsible to him for such excess. [P. 40, 73, 74.

Under this arrangement the father held possession of the property, and did pay a large amount of money on the debts secured in the Bennett deed of trust, and continued to make these payments after he filed his petition in bankruptcy. [P. 56, 52, 53.

Prudence Gifford was old and jealous of her rights, and had peculiar notions as to what was necessary to make her safe in the matter of transacting the business. Hence the formality was gone through with of paying over the money by Jo. G. and then taking it back as a loan from her on executing his notes to her for it. All this was done to satisfy her and make her quiet. Hence Jo. G. borrowed $3200, which added to $800 of his own, made up $4000, which was paid and immediately received back as a loan, he executing two notes, one to her for $3500, and the other for $500 to Wm. Gifford, who had a half interest in the mill conveyed in the deed of 10th June, 1867. [P. 41, 42, 52, 84.

Since the commencement of this suit Jo. G. Gifford has died, and his personal representative is duly in court, also his heir at law and widow.

Before the decree of 22d of May, 1874, (p. 117, 118) was rendered, Bankhead, the original complainant, had died, and the suit had been revived in the name of his administrator. But his heirs at law have never in any way been made parties to this suit.

Complainant in his bill seeks to recover upon the ground of the written instrument from the assignee. [P. 104-5.

ASSIGNMENT OF ERRORS.

We insist that the Court erred on the following points:

1. The Court erred in holding that the conveyance of the 13th June, 1871, made by the assignee to the complainant, Bankhead, included, as a matter of fact by its terms or by any reasonable construction, any of the property sued for in the present suit.

2. The Court erred in holding that the said conveyance of 13th June, 1871, had any validity, whatever, as to any property sued for in the present suit, even if in point of fact it did in terms or by reasonable construction include that property, and this for the following reasons, viz:

1. The assignee had disclaimed on the record (p. 101) any interest in the property involved in the present suit, and did not in point of fact petition the Court for the sale of it, and hence, the order of sale was void as to that property. The District Court, sitting as a Court of Bankruptcy, is a court not of general jurisdiction, but of special and limited jurisdiction, and there is nothing in our bankrupt law which authorizes the Bankrupt Court to order the sale of property which is not claimed by the assignee as assets, and in reference to which he makes no petition for sale, but on the contrary disclaims on the record all interest in it.

2. Because, assuming that the assignee had claimed the property and had petitioned the court for an order of sale, the order of sale would still be void by reason of the fact that neither Jo. G. Gifford or the trustee, and beneficiaries under the Bennett deed had been notified as required by the 25th section of the Bankrupt Act of 1867, and there is nothing on the face of the order itself or anywhere in the Bankrupt record which shows that any of these claimants were notified, and no such notification can be presumed.

Cleveland vs. Boerum, 27 Barbour N. Y. R., 252.

Knight vs. Cheny, 5 Bankrupt Register.

Darbry's Lessee vs. Russell & Hicks, 5 Haywood Tenn. R., 139.

3. This suit is barred by the statute of limitation of two years. The assignee was appointed 6th May, 1868, and this bill was filed 31st August, 1871. [P. 1 and 94.

Second Section Bankrupt Act of 1867.
Cleveland vs. Boerum, 27 Barbour N. Y. R., 252.
Goss vs. Singleton, 2 Head, 69.
Saunders vs. Harris, 1 Head, 185.

4. Upon the assumption made in the bill that the property sold by the assignee on the 13th June, 1871, to Bankhead was worth $20,000, it was most unconscionable that he should take it at $225, and the court should have so held.

5. The court erred in enforcing a sale made *in solido*, and not in parcels, in violation of 21st General Order in Bankruptcy.

[Winters vs. Cross, 6 Coldwell, 331.

6. The bill should have been dismissed on demurrer for want of proper parties. Neither the assignee or bankrupt were made parties.

7. The court erred in holding that complainant could be heard to charge that the deeds to Jo. G. Gifford and to Bennett were fraudulent after he had proved his debt in bankruptcy as he alleged in his bill, and the bankrupt had received his discharge without objection. The bill was demurred to on this ground. [P. 12.

See 29th Section Bankrupt Act of 1867.
24th General Order in Bankruptcy.

8. The court erred in holding that the deed to Jo. G. Gifford was fraudulent. The agreement between bankrupt and his wife touching her legacy before it was reduced to possession was such an agreement as will be upheld by a court of equity.

Click vs. Click, 1 Heiskell R., 607.
Gass vs. Gass, 1 Heiskell R., 613.
Sanford vs. Weedon, 2 Heiskell R., 71.

9. The heirs of Bankhead are not parties to this suit, and the court erred in rendering any decree in favor of the administrator of Bankhead in reference to the land embraced in the

Bennett deed of trust. In Tennessee the equity of redemption, like other equitable estates in land, is assignable, and on the death of the owner, whoever he may be, descends to his heirs at law, *and does not go to his administrator.*

Elliott vs. Patton, 4 Yerger, 10.
Hepburn vs. Kerr and Davidson, 9 Hum. 727.
Pillow vs. Langtree, 5 Hum. 389.
Wilkins vs. Frierson, 2 Sneed, 701.

MONTGOMERY BLAIR,
ANDREW McCLAIN,
SOLICITORS FOR APPELLANTS.

ARGUMENT.

The complainant's assumed ground of recovery in this suit is that he has succeeded to the right and title of the assignee in the property sued for by virtue of his purchase and conveyance from the assignee.

If the title did not pass from the assignee under this sale and conveyance, then the title is still in the assignee, and no recovery in the present suit is possible in any aspect of the case, for the assignee has not been made a party.

Now, the assignee was a lawyer of a high order of respectability, and we do not deem it out of place here to state that he has, since the date of these transactions, been appointed by the Governor of Tennessee, Judge of one of the Judicial Circuits of Tennessee composed of eight counties, and that he has subsequently been twice elected to the same office by the people, and is now the incumbent in that office. The assignee was acquainted with the facts connected with these conveyances and he regarded them as made in good faith, and therefore valid and binding. Bankhead, the original complainant in this suit, undertook in the Bankrupt Court to have him removed from his trust as assignee because he did not

disregard these conveyances and treat them as void. To this end he commenced making motions and filing petitions in the Bankrupt Court, and finally succeeded in procuring an order for a rule on the assignee to show cause why he should not be removed. Thereupon the assignee filed an answer to the petition of Bankhead, and accompanied his answer with a full report of the condition of the bankrupt's estate, and in this report he makes special mention of these conveyances of the bankrupt, and especially of the conveyance to Jo. G. Gifford of the 10th June, 1867, and says explicitly that he is satisfied as to the *bona fides* of this transaction, and that the bankrupt *had no interest in* this property when he filed his petition. [P. 101.

Upon the coming in of this answer and report, the court made an order that the rule to show cause why he should not be removed from his trust be discharged, and the court also declares the report *full*, and that the assignee had not been guilty of either fraud or laches. [P. 104.

This report and answer was filed on the 16th May, 1871, and on the same day the assignee filed a petition asking an order for the sale of certain assets therein mentioned.

The petition is in these words, (p. 104) viz:

"In the Matter of Gideon Gifford, Bankrupt.

"To the Hon. C. F. Trigg:

"N. W. McConnell, Assignee of the estate of said bankrupt, respectfully represents that a certain portion of said bankrupt's estate to-wit: the notes, judgments and accounts described in the appropriate schedule of the papers in said matter, are almost entirely on insolvent parties or covered by set-offs; that the land located in Pulaski county, Ky., is worth comparatively little, and the bankrupt has not fully paid for a portion of it, and has no title to any of it; and that it is impossible to tell when the Government claims will be collected if ever; and that there is no money in the hands of the Assignee with which to defray the expenses in settling said

estate; and that according to the best judgment of your petitioner, it will be for the interest of the creditors of said estate that said property be sold. Therefore, he prays that he may be authorized to make sale of said property, subject to all set-offs and encumbrances in the manner prescribed by the General Order for the sale of *unencumbered* property, after giving notice for twenty days in the Hartsville Vidette. N. W. McCONNELL.

Sworn to and subscribed before me this 16th day of May, 1871.

E. R. CAMPBELL, Clerk.

Now, it is plain that the assignee does not here pray for the sale of any property which was included in any of the deeds of bankrupt which the complainant seeks to set aside in the present suit. The assignee would have stultified himself if he had prayed for a sale of any of that property, for, as we have just seen, the assignee had said in his report, which was filed on the same day on which this petition was filed, that the bankrupt had no interest in any of this property. P. 101.] The property mentioned in the petition of the assignee was the notes, judgments and accounts embraced in the schedules in bankruptcy, B. 2 and 3. (P. 90 and 91,) and the land in Kentucky and the Government claim.

Notwithstanding all this, on the next day after this petition was filed, viz: 17th May, 1871, the following order appears to have been entered upon the records of the court. [P. 104-5:

"In the Matter of Gideon Gifford.

"In the above matter it appearing to the Court from the petition of N. W. McConnell, Assignee, that it would be to the interest of creditors to sell the assets to the highest bidder for cash; it is therefore ordered by the Court that the said assignee sell said assets *described in the petition*, viz: All the interest of the bankrupt in the property conveyed to Jo. G. Gifford by said bankrupt, and all the interest of said bankrupt in all other property belonging to his estate, both real and personal, to the highest bidder for cash, at the Court House door in Nashville, after giving twenty days' notice in the Hartsville Vidette, and ———, Nashville, Tenn."

Now, this order is most remarkable in two particulars. First, It includes all the interest of the bankrupt in the property conveyed by bankrupt to Jo. G. Gifford, when the assignee had reported on the day next preceding, that the bankrupt had no interest in that property at the time he filed his petition to be adjudged a bankrupt.

Secondly, It purports to be limited to the property described in the petition of the assignee, and to order the sale of no other property except that which *is described* in the petition, when, as we have just seen, the petition most manifestly does not describe any property included in the conveyance to Jo. G. Gifford.

How it happened that such an order as this (which taken in connection with the report and petition of the assignee, is simply absurd), should have been entered on the records of the Bankrupt Court, does not admit of an easy explanation. But let the explanation be what it may, the order is without any force so far as the present suit is concerned, for the reason that it was never executed by the sale of any of the property sued for in the present suit.

It does not appear that the assignee ever made any report of what he did in the execution of this order. It appears, however, from an instrument of writing executed by the assignee to the complainant on 13th of June, 1871, (pp. 108-9) that on that day the assignee made a sale of the assets of the bankrupt at public auction, and the complainant, Bankhead, became the purchaser at one bid of the entire assets at the price of $225, and the assignee then proceeds to specify in what these assets consisted, in the following language, viz:

"Said real estate consists of 275 acres of land in Pulaski county, Kentucky, and any interest that said bankrupt may have in the tract of land upon which he now lives, situated in Trousdale county, Tenn., and bounded on the north by the lands formerly owned by Gouldman Donohoo, on the east by those of H. K. Patterson, on the south by those of W. Hart, and on the west by the lands of

Sally Stalker and said W. Hart, containing about 200 acres. The personal estate consists of notes, accounts and judgments, and claims against the United States Government, and for a more particular description of the same reference is here made to the schedule of said bankrupt on file in the office of the Clerk of the United States District Court for the Middle District of Tennessee, but I make this conveyance simply as an Assignee of said bankrupt and not otherwise. This 13th of June, 1871.

N. W. McCONNELL, Assignee
In Bankruptcy of Gideon Gifford.

Attest: E. F. MULLOY, J. P. HELMS

Now, this conveyance of the assignee, it will be observed, is perfectly consistent with his petition, except it may be, in one particular. He specifies the property conveyed as the assets of the bankrupt, just as in the petition, to be the land in Kentucky, and the notes, judgments and accounts described in the schedules filed with the petition in bankruptcy, and the Government claim. The property thus far described in the conveyance is precisely the same as that described in the petition. The only difference in the description of property conveyed and that referred to in the petition, is in the reference to the 200 acres of land on which bankrupt lives, which reference he makes in this dubious language, viz: "*and any interest that said bankrupt may have in the tract of land upon which he now lives, situated in Trousdale county, etc.*"

Whether the assignee chose to make this dubious reference to "*any interest the bankrupt might have*" in this 200 acre tract of land because some allusion was made in the order of sale to the property conveyed to Jo. G. Gifford or not, or whatever may be the reason, is a matter of no consequence in the present suit, because in this present suit complainant does not seek to recover any interest of the bankrupt in that land. The bankrupt's alleged interest in this 200 acres of land was made the subject of litigation in the other suit of complainant which was commenced at the same time as the present suit, and which was dismissed on the hearing.

In the present suit the complainant seeks to recover the alleged interest of the bankrupt in the lands conveyed to Bennett, trustee, (p. 8,) and the alleged interest of the bankrupt in the Carthage and Hartsville Turnpike, all of which was conveyed to Jo. G. Gifford. [P. 11.

Now, the assignee does not make the remotest reference to any of this property, either in his petition or in his conveyance to complainant, but on the contrary, says in his report, (p. 101) that the bankrupt had no interest in this property at the time he filed his petition to be declared a bankrupt.

Neither does the bankrupt set forth this property as assets in his schedules, but on the contrary, as to the Turnpike interest, he sets forth in schedule B. 4, (p. 92) that he has no stocks, shares, etc., and in the same schedule he makes reference to his conveyances to Head and Bennett, trustees, and also to the deed to Jo. G. Gifford of the 10th July, 1867, as valid and existing conveyances duly registered.

Now, if the position which we here maintain be correct, that in point of fact the assignee did not convey and did not intend to convey to the complainant, Bankhead, any interest in the property sued for in the present suit how can any recovery be had in this suit by virtue of this alleged conveyance.

Now, the complainant charges that these conveyances of the bankrupt are all fraudulent and void. In all this we think he is mistaken, and hold with the assignee that they are valid and that they were honestly made for a legitimate and laudable purpose.

But let us suppose that we were wrong in this, and that these conveyances were, in point of fact, fraudulent and void. Now, if the assignee entertaining the opinion, as he did, that they were honestly made, and were valid conveyances, did not in his convey, ance to the complainant include any of the property sued for in the present suit, will this alleged conveyance to the complainant avail any thing even though the conveyances of the bankrupt were, in

point of fact, fraudulent. If the complainant has no conveyance from the assignee, then he stands in no condition to raise questions about fraud or anything else.

But there are insuperable difficulties in the path of complainant, even though it were true that, in point of fact, the conveyance of the assignee did, in terms, embrace the property sued for in the present suit. The order of sale is itself void upon the face of the record, and if the order of sale be void, then of course any attempted sale and conveyance under it would be void also.

Now, in point of fact, as we have already shown, the assignee did not claim any of the property sued for in the present suit, but did enter a disclaimer on the record, (p. 101,) and not claiming it he did not petition the court for the sale of it. This being so, the order of sale is void on the face of the bankrupt record (at least as to the property named in this suit,) for there is nothing in the law of bankruptcy which authorizes an order of sale of assets of the bankrupt estate when the assignee neither claims the property or asks an order for the sale of it, but on the contrary has placed on record his disclaimer.

The District Court setting as a Court of Bankruptcy is not a court of general jurisdiction, but on the contrary is a court of special and limited jurisdiction. This being so, upon what principle can a sale of property by order of court be upheld when the assignee, in whom the title to all the assets is vested, neither claims it or asks that it be sold, but on the contrary disclaims upon the record any interest in it. Upon that state of facts an order of sale is not within the special and limited jurisdiction of the court, and is void.

But let us reverse the facts as they stand on the record, and let us assume that in point of fact the assignee did claim as assets the property sued for in the present suit, and that he did petition the court for an order of sale of it. The order of sale is void even on that assumption.

Upon this assumed state of facts the case would come within the provisions of the 25th section of the Bankrupt Act of 1867 touching the sale of property the title to which is in dispute.

The provision made in that section is in these words, viz.:

"Whenever it appears to the satisfaction of the court that the title to any portion of an estate, real or personal, which has come into possession of an assignee or which is claimed by him, is in dispute, the court may, *upon the petition of the assignee and after such notice* to the claimant, his agent or attorney as the court shall deem reasonable, order it to be sold under the direction of the assignee, who shall hold the funds so received in place of the estate disposed of, and the proceeds of the sale shall be considered the measure of the value of the property in any suit or controversy between the parties in any court."

Now, the property in the present case, assuming that the assignee had claimed it, was certainly in dispute. The bankrupt, long before he filed his petition in bankruptcy, had made these conveyances to Bennett and to Jo. G. Gifford, and they had been registered in both instances soon after their execution (p. 9 and 12.) We will presently allude to the facts connected with the sale of the property by the bankrupt to his son, Jo. G. Gifford. At present we will only say that the property was left in the possession of the bankrupt under a power of attorney from Jo. G. Gifford to manage and control it for him, and this was its condition when the bankrupt entered into bankruptcy (pp. 51, 73, 74.) The answer of Jo. G. Gifford and the evidence abundantly shows that in point of fact Jo. G. Gifford did claim and hold this property under this conveyance from the bankrupt. As to the property conveyed in the Bennett deed, Jo. G. held and claimed that property of course subject to the prior claims of the beneficiaries under that deed. Such were the terms of the conveyance to him of the 10th of June, 1867.

Now, we see from this 25th section of the Bankrupt Act that a sale is to be made only after such notice to the claimant, his agent

or attorney as the court shall deem reasonable. This order of sale contains no recital of the fact of such notice having been given to Jo. G. Gifford, or to Bennett, or to any of the beneficiaries in the Bennett deed, or to their agents or attorneys, nor does any evidence of any such notice having been given to any person appear in the record of the bankrupt court, while the order of sale does upon its face mention the conveyance to Jo. G. Gifford. [P. 105.

What is the consequence of this omission on the face of the record? We think that it is quite plain that this failure to show that such notice was given renders the order of sale void.

Now, we concede that when a record shows a judgment, order or decree which is regular on the face of the record, but which is nevertheless void by reason of some matter, *dehors* the record that this invalidity cannot be shown in a collateral proceeding. For instance, if the record presents nothing showing its invalidity but the judgment is nevertheless void for fraud, this invalidity cannot be shown in a collateral proceeding, but only in a suit brought attacking it directly. But when it is void on the face of the record the invalidity may be shown and insisted on in a collateral proceeding as well as in a direct one. Such is the fact in regard to this order of sale.

When notice in some form to an interested party is required to be given in order that he may have his day in court, the record in some form must show that notice was in point of fact given, otherwise the judgment, order or decree as to such interested party is void, for the court had no jurisdiction of his person. In common law proceedings the notice is given by service of a writ. When the writ is returned into court with proper indorsements of service made by the proper officer it becomes a part of the record, and taken in connection with the judgment which follows it shows that the court had jurisdiction of the person of the defendant. In all proceedings like the one we are now considering which are not in the course of the common law, but where it is nevertheless required

by law that notice must be given to an interested party or to some one representing his interest that he may have his day in court, the fact that this notice was in point of fact given must be recited on the face of the judgment, order or decree, or at least must appear in some form upon the face of the same record which contains the judgment order ot decree, otherwise such judgment, order or decree will be void.

All this is plain and familiar law, and if there be any statute calling more loudly than all others for its strict application it surely is this provision of the 25th section we are now considering. In fact, this provision is so extraordinary that its constitutionality has been called in question by one of the members of this Honorable Court. We refer to the case of Knight *vs.* Cheny, 5th Bankrupt Register. It was certainly going to the verge of the Constitution to provide that an assignee in bankruptcy might, upon a mere claim of title and nothing more, file his petition in the Bankrupt Court and procure an order of sale of the property of any citizen of the Judicial District and then provide no further remedy than to permit him to come into court and litigate with the assignee for the proceeds of sale.

Such, extraordinary as it is, is the provision of this 25th section. The order is to be made, however, only after such notice to the claimant, his agent or attorney as the court may deem reasonable. But if this section is to receive such latitudinous construction as to sustain the validity of sales when the record containing the order of sale does not show that notice was given by raising a presumption in favor of the regularity of the order and placing the *onus* on the claimant to show negatively that in point of fact no such notice was given, then indeed would the rights of property be shaken. Such a proceeding would deprive a man of his property without due process of law, and would lead to the most monstrous consequences. But we think it clear both upon authority and reason that no such presumption can be made. The case of Cleveland *vs.* Boe-

rum, 27 Barbour, Supreme Court Reports, p. 252, is a direct authority. That was a case under the Bankrupt Act of 1841, and the facts of that case were these:

A bill was filed in the State court to foreclose a mortgage and pending this suit the mortgagor filed his petition in bankruptcy and was adjudged a bankrupt, and his property conveyed under a general assignment to an assignee. In the State court no notice was taken of this fact, and the cause proceeded to a final decree without making the assignee a party. Subsequently the assignee in bankruptcy sold the same property which was the subject of foreclosure in the State court, and the purchaser from the assignee brought suit against the purchaser under the decree of foreclosure for the property and the Supreme Court of New York held that:

"In order to sustain a title alleged to have been acquired under statutory proceedings all the requisite preliminaries *must have been adopted and must be proved. There is no presumption in their favor* when a change of title is attempted to be established.

"An assignee in bankruptcy has no power to sell and convey property of the bankrupt without an order of the court. The obtaining of such an order is a substantial requisition of the statute and must be complied with. A purchaser claiming under a deed executed by such assignment must aver and produce an order of sale.

"The order cannot be proved by recitals in the deed."

So we insist that the order of sale in the present case is void upon the face of the record in any aspect in which it can be viewed, and that the invalidity cannot be cured by any presumption or intendment. Indeed it is difficult to understand why a party relying upon the deed of an assignee in bankruptcy does not stand in a situation analogous to that of one who relies upon a Sheriff's deed. What would be thought of a sheriff's deed setting forth no more than is contained in this conveyance of the assignee of 13th June, 1871? In Tennessee a plaintiff in ejectment who re-

lies upon a sheriff's deed must accompany his deed with a transcript of the record of the suit in which the judgment was recovered in order to show the regularity and validity of the sale under which he claims.

Authorities collated 1 vol. Meigs' Digest, p. 448

Darbry's Lessee vs. Russell & Hicks, 5 Haywood Tenn. R., 139.

In Mississippi it was held in a case under the Bankrupt Act of 1841, that the deed by an assignee conveying lands, of the bankrupt, must recite the decree of bankruptcy and the order of appointment of the assignee, otherwise the conveyance would be void.

Gray vs. Heslip, 33 Mississippi R. p. 238.

We will also here call attention to another irregularity in the proceedings in bankruptcy. The order of sale does not authorize the assignee to convey the property, but only to sell. (p. 105.) The assignee acted in a ministerial capacity, and should have reported the sale for confirmation. But this he never did, and hence no order of confirmation was ever made. In this view of the case also, we think complainant has no title.

The statute of limitations of two years is fatal to complainant's suit. We refer to the second section of the Bankrupt Act of 1867.

It provides that "No suit at law or in equity *shall in any case be maintainable* by or against an assignee, or by or against any person claiming adverse interest touching the property and rights of property aforesaid, in any court whatsoever, unless the same shall be brought within two years from the time the cause of action accrued for or against such assignee."

Now the assignee was appointed on the 6th May, 1868, (page 94) and this suit was commenced on the 31st August, 1871, (p. 1.) more than three years after the assignee was appointed. The Bennett deed was made in 1866, and the deed to Jo. G. Gifford was made in 1867, and the proof, as we shall presently show, clearly establishes the fact that as to Jo. G. Gifford, he did claim under

the deed of 1867 all the property therein conveyed to him, and as to the deed of trust to Bennett, the presumption is made even in the absence of proof that the beneficiaries accepted or claimed all the interest therein conveyed to them. (Gass vs. Singleton, 2 Head 69; 3 Yerger 257; 3 Hum. 242; 1 Head 206; 4 Cold. 626; 2 Haskell 418; 2 Story Eq. Ju. 1036A; and as to the trustee, no formal acceptance of the trust is necessary. (Saunders vs. Harris, 1 Head 185). Both these deeds were duly registered at the time they were executed. (p. 9 and 12).

So there was in point of fact an adverse claim to that of the assignee at the time he was appointed, and this adverse claim, as we have already seen, was so well founded that the assignee respected it and disclaimed all interest in the property as assignee.

Now, upon this state of facts, if the assignee had brought this suit himself there can be no doubt that he would have been barred by this provision in the statute, and if we consider (which in point of fact we do not) that a purchaser from an assignee can maintain a suit to set aside a fraudulent conveyance of the bankrupt, there can be no doubt that if the assignee would be barred, so would be the purchaser also.

Cleveland vs. Boerum, 27 Barbour N. Y. R., 252.

In this case of Cleveland vs. Boerum, this precise point was considered of by the Court, and the Court held as we have just indicated.

The facts of that case (which was a case under the Bankrupt Act of 1841, as we have just seen), were that the purchaser from the assignee brought suit to recover certain alleged assets of the bankrupt's estate more than two years after the appointment of the assignee, and it was held that the assignee would have been barred and as a consequence, necessarily resulting, so would the purchaser from the assignee be also barred. In fact, this provision of the bankrupt law, limiting the action to two years, is not the ordinary statute of limitations, giving a mere discretionary defence against

the action. It involves the question of the *jurisdiction* of the Court. The language of the act is, *"No suit shall in any case be maintainable, etc."*

In the other case commenced and determined at the same time in the Circuit Court with the present case, this provision of the bankrupt law was applied, and that suit was dismissed, as appears by the final decree in that case, upon the ground that the suit was barred by this statute of limitation of two years, ~~and because the Court had no *jurisdiction* of the case~~. Now, the facts of the case were in the main the same as in the present suit. Both suits were commenced at the same time; the same proof was taken to be read in both cases to avoid repetition, and both cases were tried at the same time. All the property involved in that suit, was embraced like the property involved in the present suit, in the deed to Jo. G. Gifford, and the only reason, no doubt, for not embracing the property involved in both suits in one and the same suit, was to avoid the objection of multifariousness, and while we thought that the other bill was dismissed very properly on the ground set forth in the decree that the suit was barred by the limitation of two years, [redacted], we have never been able to comprehend why the present bill should not be dismissed upon the same ground.

Complainant's suit is environed with still other difficulties. He charges in his bill, that the property sold by the assignee, which he claims to have purchased, was worth twenty thousand dollars, and perhaps even twenty-five thousand dollars. (P. 3). All this property he claims to have bought at one bid, at the price of $225, and filed the present bill and the one which has been dismissed for the purpose of recovering it. To say nothing of the transaction being upon its face, according to Complainant's own statement in his bill, most unconscionable, it is plainly in direct violation of the twenty-first general order in bankruptcy. The provision referred to is in these words: "And in making sale of the real estate

of a bankrupt, the assignee shall, unless otherwise ordered by the Court, offer the same in lots or parcels, if it exists in separate parcels, in such manner as may be for the interest of the creditors of the estate."

The same rule is held by the Supreme Court of Tennessee to be obligatory in making sales under final process.

Winters vs. Cross, C. Coldwell, p. 331.

But neither the assignee or the bankrupt are parties to the bill, and it was demurred to upon that ground.

The bill was also demurred to upon various other grounds, one of which was this, viz: (p. 12.)

The bankrupt as charged received his discharge in the same bankrupt proceeding in which complainant proved his debt.

Bankrupt Act of 1867, section 29 requires that notice of the application for a discharge be given all creditors who have proved their debts.

He is therefore chargable with notice of what transpired in that proceeding. The bankrupt made special reference to all these conveyances in his schedule, B. 4. (p. 92.)

Now, if he permitted the bankrupt to receive his discharge without objection, on the ground that he had made fraudulent conveyances of his property, it is too late for him now to raise objections to these conveyances on the ground of fraud. The bankrupt is required to swear, as a prerequisite to a discharge, that he has not fraudulently conveyed his property, and by the 29th section of the Bankrupt Act of 1867, it is expressly provided that the Court shall not grant a discharge if the bankrupt has fraudulently conveyed his property, and the 31st section of same act makes plain and ample provision for any creditor who wishes to make opposition to the discharge to do so, by simply filing specifications in writing, of the grounds of his opposition, and the 24th General Order in bankruptcy, presents the particular form and time within which he may make the objection.

Now, when the final order of discharge is granted, does it not close up all questions as to the regularity of the steps through which that result was reached, at least so far as creditors who have proved their debts are concerned.

Do not these preliminary matters on which the final order of discharge rests become *res judicata*, as to creditors who have proved their debts? Can these matters be brought again under review in judicial proceedings, except at most, in a direct proceeding instituted to vacate the order of discharge?

But waiving all questions of this character for the present, we will now proceed directly to the consideration of the question of fraud in fact.

The Complainant, in his bill, charges that the deed to Bennett and to Jo. G. Gifford are both fraudulent.

Now in regard to the lands conveyed in the Bennett deed of trust, we will premise that not only has the charge of fraud been abandoned by the failure to introduce any proof tending to support such charge, but the charge has been abandoned in another manner, even more conclusive, if possible, than that. We refer to the failure to make the heirs of Bankhead parties to this suit.

If this Bennett deed were fraudulent and void, and the conveyance of the assignee had embraced these lands, and the deed of the assignee was in all other respects valid and sufficient to convey the title in fee simple to Bankhead, as he assumes in his bill, then on the death of Bankhead, the title to these Bennett lands would have descended, of course, to the heirs of Bankhead. But these heirs not being made parties, the charge of fraud as to the Bennett deed must be held to be abandoned. But as the heirs of Bankhead have not been made parties, if a recovery of any interest in these lands be still insisted on, it becomes a matter of no small difficulty to understand how this is to be done, even when the charge of fraud is abandoned.

The ~~claim~~ deed of the 22nd May, 1874, (p. 117, 118) appears to have

proceeded upon the idea that the Bennett deed was not fraudulent, but being valid, the equity of redemption remained in the bankrupt, and that this equity of redemption passed from the bankrupt to the assignee in bankruptcy, and from him to Bankhead, under conveyance to Bankhead, and on the death of Bankhead to his administrator. This is clearly erroneous, for in Tennessee the equity of redemption is indeed assignable, and like other equitable estates on the death of the owner, whoever he may be, it is cast by descent upon his heir, *and does not go to his administrator.*

Elliott vs. Patton, 4 Yerger, 10.
Hepburn vs. Kerr and Davidson, 9 Hum. 727.
Pillow vs. Langtree, 5 Hum. 389.
Wilkins vs. Frierson, 2 Sneed, 701.

So upon every aspect of the case the decree of 22nd May, 1874, (p. 117, 118) is erroneous upon this branch of the case, and no recovery, whatever, can be had of any interest in these lands, embraced in the Bennett deed of trust.

As to the deed to Jo. G. Gifford. we will repeat what we have before assumed, that if the conveyance from the assignee to the complainant does not for any of the reasons we have pointed out, operate as a conveyance to the complainant of the property involved in the present suit, then the question of fraud does not arise in the case. For if the complainant has no valid conveyance to himself from the assignee, is it not plain that he has no ground on which to stand, coming into this court, as he does, as purchaser from the assignee. But pretermitting that point for the present, we will now consider this charge of fraud. This charge of fraud made in the bill has been directly and emphatically denied in the answer of Jo. G. Gifford, and as we think, has not been sustained by the proof. (P. 7. 15, 16, 17). The facts of the case, as developed in the proof, showed the transaction to have been one that was fair and honest, and in accordance with the dictates of filial duty and natural affection.

The bankrupt, Gidion Gifford, had in early life married Prudence Bratton, the daughter of Wm. Bratton. Bratton died about the year 1858, and left to his daughter a legacy of $2900.00 She was anxious to invest this money in a piece of land to secure for herself, in her own right, a home. Before the executor of Bratton was ready to pay over this legacy, Gideon Gifford was considering the matter of buying the 200 acre Debow tract of land. He could not pay for it, without the use of his wife's legacy, which was still in the hands of the executor of Bratton. While the money was in the hands of the executor, and before any part of it had been paid over, it was agreed between Gifford and his wife, that he would invest this money in this land, and in taking title he would have such interest conveyed to her in her own right as would be equivalent to the amount of her money so invested. The money was received and paid over to Debow under this agreement between Gifford and wife. This was the inception of the transaction out of which the deed of bankrupt to Jo. G. Gifford arose.

Now this character of agreement between husband and wife will be upheld in a court of equity, and has the sanction of the Supreme Court of Tennessee in a number of reported cases.

Click vs. Click, 1 Heiskell, 607.
Gass vs. Gass, 1 Heiskell, 613.
Sanford vs. Weedon, 2 Heiskell, 71.

The principles upon which this kind of ~~argument~~ agreement rests is simply this, that it is simply the accomplishment of that by a private agreement between the husband and wife, which a court of equity would decree in favor of the wife without an agreement. So the wife's equity is secured to her why should it be a matter of any importance whether it is secured to her through a private agreement between her and her husband, or by the decree of a court of equity. When the money came to the hands of the husband he received it under the agreement made with his wife, while the money was in the hands of the executor, and therefore before his marital right attached. He consequently received it as trustee for his wife.

(Pp. 15, 16, 51, 81, 60, 61). Bratton died in 1858, and this agreement was made in 1859. Some of the money was paid over as late as 1860, and probably later. (P. 81).

The agreement between Gifford and wife was made before the land was bought (P. 55).

Now the money of Prudence Gifford having been thus invested in the 200 acre tract of land, it turned out that Debow did not at the time of the trade make any instrument of conveyance or obligate himself in writing, to convey this land. Payments were, however, made from time to time, amounting to more than $7000, and $2900 of this money was the money of Prudence Gifford. (P. 73.) The result was that litigation ensued between Debow and Gifford.

Debow sought to collect the balance of the purchase money, the price originally agreed upon being $10,000. Debow alleged that he had given a bond for title. Gifford denied that he had executed any bond, or that there was any writing whatever from Debow evidencing the trade, and sought to rescind the trade, and recover what had been paid on the land.

In 1866 Gifford made the deed of trust to Bennett, assigning his property for the benefit of creditors, (p. 8,) and was manifestly in failing circumstances. Matters having assumed this most unfavorable and unexpected aspect, Mrs. Gifford became exceedingly dissatisfied and alarmed at the probability of losing her money. Her husband had become insolvent and was not able to pay the balance of the purchase money if he had been disposed to do so, and real estate had declined so much that if the purchase should not be declared void and the payment of the unpaid balance of the purchase money should be enforced by sale of the land, which Debow was attempting, the land would probably not sell for enough to pay this balance with interest. So the danger of a total loss of her money became a subject of intense alarm and uneasiness with her.

Under these distressing circumstances Mrs. Gifford did just what people almost universally and very properly and naturally do when

in pecuniary trouble. She sought the advice of a lawyer. She went to the late Col. John W. Head, then one of the most eminent lawyers in Tennessee, who was a member elect of the Congress of the United States at the time of his death, and laid the whole matter before him. [P. 41.] His evidence is in the record and we invite the attention of the Honorable Court specially to it.

He advised her that it would be best for her if possible to get her money back with interest and not be involved in litigation about the land. This she said she preferred, but that her husband said he could not raise the money unless he could effect a sale of the interest he had in the 200 acres and in the property conveyed to Bennett as trustee.

Col. Head swears that he advised that the effort be made, but in the event it was not arranged in this way, that he told Mrs. Gifford that he would file a bill for her and make an effort to set up her rights and equities in the land. That some time after this he was called upon by Gideon Gifford and Jo. G. Gifford to prepare this deed of the 10th of June, 1867, from Gideon Gifford to Jo. G. Gifford, which is made the subject of complainant's charges of fraud in the present suit. [P. 41.

Mrs. Gifford, after she had received this advice from Col. Head, went in her distress and trouble to her son Joseph and desired him to do something for her in the way of saving her money, that she might have a home in her old age which was now upon her. This was an appeal which it is difficult to see how any dutiful son could resist. He was not in such pecuniary circumstances, however, as to be able to relieve her by the advance of any cash. After considerable discussion of the matter in the family the arrangement was finally adopted, a part of which was the execution of this deed of the 10th of June, 1867, to Jo. G. Gifford.

The amount of his mother's money which had been originally paid on the land was a little over $2,900, and this with interest they put at $3,500. William H. Gifford, another son of Gideon, owned a half interest in the mill (which is included in this conveyance to Jo. G.,) and this half interest was estimated to be worth $500. So the whole amount to be paid by Jo. G. was $4,000. It

was not a trade which it suited his circumstances to make. He had before this time left his parents and had located at Murfreesboro, a town in Middle Tennessee, about fifty miles from Hartsville, near which last named place his parents lived. He was doing well at Murfreesboro in the retail grocery business. His capital was small and he could not afford to withdraw any of it permanently from his business. He agreed to pay in cash, however, the $4,000, with the understanding that this money should be returned to him as a loan upon his executing his notes for the money. All this formality of paying the money and then taking it back again as a loan was agreed upon to satisfy his mother, she insisting that it should be done in that way. He accordingly borrowed $3,200 (p. 84) which, added to $800 of his own money, made up the $4,000, and this formality of paying and taking it back again upon giving his notes was gone through with to gratify her peculiar notions. [Pp. 16, 41, 42, 52.

He was not willing to take a conveyance only of this lien or interest in the 200 acres which had arisen in consequence of the payment on it. His father and Debow were already involved in litigation about it. Debow was seeking to recover the balance of unpaid purchase money and his father to recover back what he had paid. He required, in addition to a conveyance of this interest in the 200 acres, that his father should convey his equity in the lands conveyed to Bennett, trustee, and also his interest in the Carthage and Hartsville Turnpike, he agreeing to assume the debts in the deed of trust.

The turnpike interest was involved in litigation and he was not familiar with the various debts which were an incumbrance on the land conveyed in trust to Bennett, and he lived fifty miles away from the section of country where the parties concerned resided. He was, however, disposed to do whatever he could, at all hazards, to relieve his mother. So it was agreed between him and his father that his father should make the conveyance of the 10th of June, 1867, of this interest in the 200 acres and in all the lands in the Bennett deed, and in the Carthage and Hartsville Turnpike, and take a power of attorney from him to manage and control the whole of this property. [P. 51.] It was agreed that his father should be responsible for rents and should have credit for all payments made on the debts secured by the deeds of trust, and if he

should pay on these debts more than the rents should amount to, that Jo. G. would be responsible to him for the excess. Upon this agreement the deed of the 10th of June, 1867, (pp. 10, 11,) and the power of attorney were executed. [P. 74.] This power of attorney was made exhibit to the deposition of Gideon Gifford in this suit, but by some oversight of the clerk it appears to have been omitted in making up the transcript of the record. P. 52.] Under this arrangement Gideon Gifford paid off some of the debts secured by the Bennett deed amounting to a considerable sum of money, (p. 52,) and as an evidence of the fact that the bankrupt made these conveyances, and that this whole arrangement was entered into with no fraudulent purpose on the part of either the bankrupt or his son, Jo. G., we point to the fact that after the bankrupt had filed his petition in bankruptcy, 28th of February, 1868, he continued to carry out the contract between him and his son, Jo. G., by paying large sums of money on the debts secured by the trust deed to Bennett. [Pp, 56, 52, 53.

It has turned out that after the balance of the debts secured by the Bennett deed are discharged out of the proceeds of the property, which is not yet sold, but little if anything will be left. At the end of a long litigation about the Turnpike fund about $2,500 has been realized, which came to the hands of the Clerk of the Circuit Court and has been loaned out under order of the court.

Since the bill of Bankhead against Debow and others, before alluded to, was dismissed, Debow has commenced litigation in the State court about the same thing.

So, viewing the matter as things presented themselves on the 10th of June, 1867, the trade which Jo. G. Gifford made on that day was such a one as presented no inducements to any man of sense to make who had no other motive than that of pecuniary gain, and viewing the matter retrospectively as they appear at the present time, no one can say that the consideration which Jo. G. Gifford obligated himself to pay was an inadequate one.

MONTGOMERY BLAIR,
ANDREW McCLAIN,
SOLICITORS FOR APPELLANTS.

SUPREME COURT OF THE UNITED STATES,

NO. 298.

WM. H. GIFFORD ET AL.

VS.

E. F. MULLOY, Administrator.

BRIEF OF J. P. HELMS,

SOLICITOR FOR APPELEE.

Ligon & Co., Printers, 23 Public Square, Nashville, Tenn.

W. H. Gifford et al. vs. E. F. Mulloy, Adm'r.

STATEMENT OF FACTS.

On the 18th of June, 1866, Gideon Gifford made a deed of trust to R. A. Bennett, of all his real and personal estate, (except one tract of some 200 acres known as the "Donaho tract"), for the alleged purpose of securing the payment of certain debts, to Bennett, Head, Hart & Hall, which deed was to be closed, if the debts were not paid by January 1st, 1868.

On the 18th of February, 1867, he made another deed of trust to Jno. W. Head, upon the "Donaho tract" of land, or his equity therein, to secure an alleged debt to W. S. Alexander, of $1,460.30, which deed was to be closed, if said debt was not paid by March 1st, 1868.

And on the 10th day of June, 1867, he pretended to sell and convey all of the property he then owned, real, personal, legal and equitable, to his son Jo. G. Gifford, (a young man of no means), the value of which was then some $15,000, for the alleged sum of $4,000, which sum the son borrowed for five days, part from a bank in Murfreesboro, and balance from the firm of which he was the junior member, and paid it to his

father, as the purchase money, who handed it back to him, and, as alleged, he then gave his father his note for this money payable to the mother, and the money he then returned to the bank and his firm, from whom he had obtained it three days previous.

On the 29th of February, 1868, said Gideon filed his petition in bankruptcy at Nashville, and was adjudged a bankrupt. N. W. McConnell was duly appointed his assignee and qualified as such, on the 6th of May, 1868; the Register made him a conveyance of all of said bankrupt's property, as required by law: Subsequently James Bankhead proved his claim against the estate of said bankrupt, to the amount of about $4,500. No one else ever proved any claim against said estate. The assignee failed and refused to file a bill against the parties to set aside these conveyances for fraud, or take any other steps in the matter; whereupon the District Court upon the petition of Bankhead made an order on the assignee to make his report in the case, and also to advertise the assets of said bankrupt for sale, which was done, and at said sale Bankhead became the purchaser of all of said assets at the price of $225, which he paid in cash. The bankrupt after his discharge filed his petition to prevent Bankhead from receiving these assets under his purchase, and contested his claim, which petition was by the Court dismissed, because said bankrupt had no interest in the matter Bankhead took a deed from said assignee for said assets. The said bankrupt had continued in the possession, use and control of all the property conveyed in said trust deeds and in the deed to his son, from before the dates thereof, to the final decree in this cause; the son living far away and taking no interest in or control over the same in any way. Bankhead, after his purchase and

receipt of deed, filed his bill in this case, charging the conveyance from said Gideon to his son Jo. was fraudulent, and made to cover up the property from creditors, and that there was no valid consideration passed between them therefor, asking that the same be set aside. After the cause was at issue, the defendant, Jo. G., died, leaving a widow and one minor child, who were brought before the Court by bill of revivor, as was also the administrator of said Jo. G.; and a guardian, *ad litem*, was appointed, who answered for the minor, and the bill was taken for confessed against the widow and administrator. Subsequently Bankhead died, and the cause was revived in the name of Mulloy as his administrator. On final hearing the court held said conveyance from father to son fraudulent and void and that complainant was entitled to all the personalty, in said conveyance, by virtue of his purchase at the bankrupt sale. From this decree an appeal is prayed and granted and the appeal bond is signed alone by the bankrupt, Gideon Gifford, and his assignee, McConnell. Was this decree correct?

ARGUMENT.

We insist that by no principle of law can the conveyance from the said Gideon to his son Jo. be declared otherwise than fraudulent. It contains all the badges of fraud usually mentioned in causes arising under the statute of Elizabeth. *A vendor indebted to insolvency; all of his property conveyed; retaining possession as before; the price not a full one, but inadequate; the vendee a near relative; the ostensible motive of the sale to benefit some one else; the vendee pretending to rent to the insolvent vendor; no rents shown to have in fact been paid; and the vendee in no finan-*

cial condition to make the purchase, and no use for the property purchased.

Such facts as these appearing the courts universally declare the sales fraudulent and void.*

And if this state of facts did not render the transaction absolutely void for fraud, yet they must at least make a strong *prima facie* case, and where strong suspicion of fraud is thrown around a transaction, the *onus probandi* is on him who asserts his innocence of the fraud.† Or if the consideration of a deed is impeached by a bill, and the circumstances, though insufficient to establish that it is actually unfounded, yet, if they are sufficient to cast a strong suspicion upon the transaction, it is incumbent upon the purchaser to establish the fairness of the transaction, by satisfactory proof.‡ Such proof has not been furnished, in this case, but, on the contrary, the defendant's proof, by its contradictory, inconsistent character, the more plainly demonstrates the palpable fraud designed and perpetrated by the father and son, and, we should say, the wife also; for, as much as we regret to drag the gentle sex into such a quagmire and stench of fraud as this, nevertheless the facts are that way; still as a palliation we will say she may have been "*unwilling clay in the potter's hands*"—under the husband's dominion without a will of her own.

In order to show the most glaring of these contradictions, it is only necessary to read the two depositions of Mrs. Gifford and the balance of the Gifford family. In her first deposition, answer 9, in chief, she says: "I have no notes, I only have a

*Tubb vs. Williams, 7 Hump., Tenn., 367; Middleton's Lessees vs. Sinclair, 5 Crch., C. C. R., 409: Lukens vs. Aird, 6 Wal., U. S., 78: Hamilton vs. Russell, 1 Crch., U. S. 314: Ibid, 73 and 89: 11 Wheat, U. S., 79: 1 Peters, U. S., 388: 11 Wal., U. S., 394: Huggins vs. Kemp, 20 Howrd. 45: McLean vs. Lafayette Bank, 3 McL. C. C., ——; 1 Gallison, 419: 4 Mason 312: 9 B. Muro, Ky., 513: 3 B'krupt Reg., 75: 2 ibid, 140: 2 ibid, 166: 3 ibid, 146: 2 Chicago Legal News, 161; Ridgway's Rep'ts (Lord Hardwick), 286.

†Clements vs. Moore, 6 Wal., U S., 310, 315.

‡Alley vs. Connell, 3 Head, Tenn., 578.

receipt for the money." In her last deposition, she says, she was not present when the trade was made, did not see or handle the money: "My husband brought home *a note* written by my son for $3,500—don't know *the date*," and she *declines* to file it.

Her husband, Gideon, in his first deposition, says: "Jo. gave my wife *two* notes for this $4,000. that was all the contract between me and my wife: she holds the notes. Jo. gave his mother two notes for this land at the *time* the trade was made;" (she says she was not present). He further says, "My wife took the money and let Jo. have it." On cross examination, he says, "I don't know what became of the money after I received it and paid it to my wife, I *suppose* she paid it to Jo., and took his notes for it." In his last deposition he says, the trade was made in Head's office at Gallatin, and his wife was not present: "Jo paid *me all the money the day the trade was made*, and *I paid the money to him* after he saw his mother and she requested it: I kept the money until Jo. went up to see his mother, and returned to Gallatin: Jo carried the money back with him: I took his notes payable to his mother for $3,500, and $500 payable to W. H. Gifford: these notes were executed on the day of the trade; Jo. wrote the notes; Jo. came to my house the night after the trade; I paid the money back to Jo. after he saw his mother and she agreed to it." She says she did not *know* the trade had been made *until* her husband *brought* her the note for $3,500. How any greater contradiction could be produced, where the parties were interested in being consistent, we are at a loss to conceive; but it is another apt illustration of that truthful old line, "What a tangled web we weave when we first study to deceive;" and demonstrates the soundness of that principle of law, that a

fraudulent conveyance may be proven by circumstances alone, against the oaths of the parties asserting the fairness of the transaction.*

Moreover it is plain this defense is made by the bankrupt in his own interest and for his own benefit, "is his lawsuit," for we find him employing and consulting counsel, and contracting for fees; hunting up witnesses, taking proof, executing the appeal bond, and actually files a petition under oath in this case, in his own name, (for the benefit of creditors, as he says), for the purpose of preventing Bankhead, the purchaser, from obtaining the benefit of his purchase, and *even* to dispute the proven claim of Bankhead, which the bankrupt, in his schedule, had sworn was a just claim.† Such a glaring perjury I have seldom seen. The wife says she has the note, but refuses to file it; the son is dead, and his estate is insolvent, yet she does not file the *pretended note* against the estate of her son, for *pro rata* payment; if she had such a note and were to file it, the truth would then come out, as the wife and creditors of the deceased would ventilate the transaction. We think this a strong circumstance showing the fraud in these transactions. And besides it is too plain for comment from the proof that the bankrupt and his assignee were in sympathy, if not in actual collusion. They both join in signing the appeal bond to defeat and upturn the acts of the assignee himself. This is not commendable for good faith, and would bear a much harsher appellation. But we are confident no court can read this record and arrive at any other conclusion, than that the whole transaction was conceived in fraud and carried out in the spirit of its conception.

*8 Peters. 244.

†I would suggest that all of the bankrupt proceedings are not copied into this record for some cause, though I do not see that it can work any injury to any of the parties.

It is contended, however, that if the conveyance is void for fraud, still the said Jo. G. paid certain debts that were liens upon the land conveyed in said trust deeds, and for that amount he has a LIEN upon said lands or the proceeds thereof. We reply, there is no satisfactory proof to sustain such items, and if there was, it is a familiar principle, that conveyances fraudulent in fact, will not be permitted to stand as a security for payments or advancement made on account thereof.* And where the sale is fraudulent no title passes to the fraudulent vendee.†

This being so, the title to the property was in Gideon Gifford when he went into bankruptcy, as between him and his creditors, and under the law all the property of the bankrupt, real, personal, legal and equitable, passes to and vests in the assignee,‡ and upon his appointment and qualification this title relates back to the filing of the petition of the bankrupt.‖ And upon a sale by him of the assets of the bankrupt, the purchaser is vested with such rights as the assignee had,§ which rights are in some respects superior to that of the bankrupt himself, as the assignee can sue for, and recover, any property which was conveyed by the bankrupt in fraud,¶ and the assignee can reach the property conveyed in fraud even before the passage of the bankrupt law. Then if the purchaser occupies the position of the assignee who can resist him? The bankrupt has no rights; his fraudulent vendee has none, his widow,

*Jacobi vs. Schloss, 7 Coldwell, Tenn., 385: Bean vs. Smith, 2 Mass., 252.

†Carney vs. Palmer, 2 Coldwell, Tenn., 35.

‡Bankrupt Law 1867, §14.

‖In re Henry Vogle, 2 B'krupt Reg., 138: in re Buchanan, 4 B'krupt Reg., 133: Foster vs. Hackley, 2 B'krupt Reg., 131-140: Shackelford vs. Collier, 6 Bush, Ky., 149: 2 Wal., U. S., 58: 4 John, N. Y., 536.

§In re Membane, 3 B'krupt Reg., 91.

¶Bradshaw vs. Kline, 1 B'krupt Reg., 146: Kensie vs. Frederick, 3 B'krupt Reg., 21: 2 Wal., U. S., 57: 7 Howrd, U. S., 627: 4 Sandf'd, Ch'y, 388: 9 B Muro, Ky., 513.

heirs and administrator have none superior to the deceased.* There are no creditors to resist Bankhead, as no one but him proved any claims against the estate of said bankrupt, and cannot therefore question the validity of his claim,† and legally speaking the bankrupt has no creditors after he is adjudged a bankrupt until they have proven their claims against his estate; before that they cannot vote for an assignee, resist the bankrupt's final discharge, nor participate in the dividends; in other words they are strangers until they have properly proven their claims.

It was said, however, in argument below, that the bankrupt and assignee were necessary parties. This proposition we deny, and say, that a discharged bankrupt is not a necessary party, unless we were seeking to set aside his discharge,‡ which is not attempted in this case. The assignee by his sale and deed transferred to Bankhead all the rights he possessed, *supra*, and he was not a proper party, much less a necessary one. The guardian, *ad litem*, makes the point that this sale was invalid because a sale in gross. Even if this were so in ordinary cases of bankrupt sales, yet in this case it could not apply, as no one is injured by it, the proceeds of the sale, after the costs and expenses are deducted all belong to complainant, and the assets all belong to him under the purchase, as the only creditor of the estate. It is a universal principle that whatever works injury to no one, is not wrong in morals or law. But if there were those interested who could be injured by it, still we insist the sale was regular and valid, for it was made pursuant to the order of the Court, which was to sell the interest of the bank-

*Nichols vs. Cabel, 3 Head, Tenn., 92: Moody vs. Fry, 3 Hump., Tenn., 567: Coleman vs. Pinkard, 2 ibid, 185.

†In re Lathrop, 3 B'krupt Reg., 105.

‡DeWolf vs. Johnson, 10 Wheat, U. S., 368: 1 Gallison, 371.

rupt in all property,* and the order does not require each equity or asset sold separately.

The guardian makes the further point that this action is barred because not commenced in two years after qualification of the assignee. Section 8 of the bankrupt law of 1867, is the same in substance as the law of 1841, under which it has been held, this provision only applied to cases where the adverse holding of a third party commenced before the adjudication in bankruptcy; all other cases are governed by the general provisions of the statute of limitations of the State where the suit was instituted, and the assignee may sue, in such cases after the expiration of the two years.† In this case there was no adverse holding, for the property was in the possession and under the control of Gideon, at the time he went into bankruptcy, and so continued down to the time of the sale thereof by the clerk of the court below, under the orders in this cause. He exercised all acts of ownership over this property, that any one can over any property—he used it as he pleased, sold what he pleased, traded some off, and wore some out. What more could any owner do? His holding could not be adverse to the assignee, but in subordination of and subject to the title of the assignee. No claim was set up to any of this property by the son, Jo. G., until after this suit was commenced, and even then he exercised no control over it.

A part of these assets was a suit against the Hartsville Turnpike Co., carried on in the name of said Gideon, both before and after his discharge, without, so far as we can see, any notice being taken of his bankruptcy, or his pretended sale of his effects to his son, who never gave this matter any attention; lived in another county, 40 miles away, and did not claim this asset or any other, until this suit was commenced.

But above all this, we insist, the guardian is estopped to raise new issues by his answer, as he and his word must stand

*Record. p. 105.

†4 Johns, N. Y., 536: 7 Howrd, U. S., 627: 9 B. Muro, Ky., 513: 2 Wal. U. S., 57.

upon the defense made by Jo. G. before his death, unless it were matters *puis darien continuance.*

Upon the whole case we conclude, if there was any error committed in this case, it was against the complainant, in not holding the said "trust deeds" void, because the trustee failed to qualify and give bond as required of trustees under section 1974 of the Code of Tennessee.* We are aware that no trust shall ordinarily fail for want of a trustee, at the same time, it is not shown that the beneficiaries ever accepted the benefit of the trust, and their acts as disclosed in this case, show they did not rely upon said trust, and did not accept the benefits thereof, as they took no steps to have said trust closed, though past due several years when this suit was commenced, and so far as we may judge from their conduct, or see from the record, it would have remained unclosed to the present time, but for this suit, which even failed to interest them sufficiently to induce them to answer. And presumption does not aid them in the conclusion that they did accept the benefit of the trust, but they must show this by affirmative proof, which they failed to do.

The question of resulting trust cannot arise in this case, as that arose, as *claimed* in another suit, out of the purchase of the "Donaho tract" of land, which tract is not involved in this suit, except in so far as it was a part of the property included in the sale of the father to the son, and is included in this record because one set of depositions were taken to be read in both cases.

As we feel these questions are decisive of this case, we shall take up no more time of the Honorable Court in discussion, but leave the case with the Court.

J. P. HELMS,
SOLICITOR FOR COMPL'T.

*August vs. Seeskind, 6 Cold., Tenn., 166: Maxwell vs. Finnie, ibid, 434.